This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

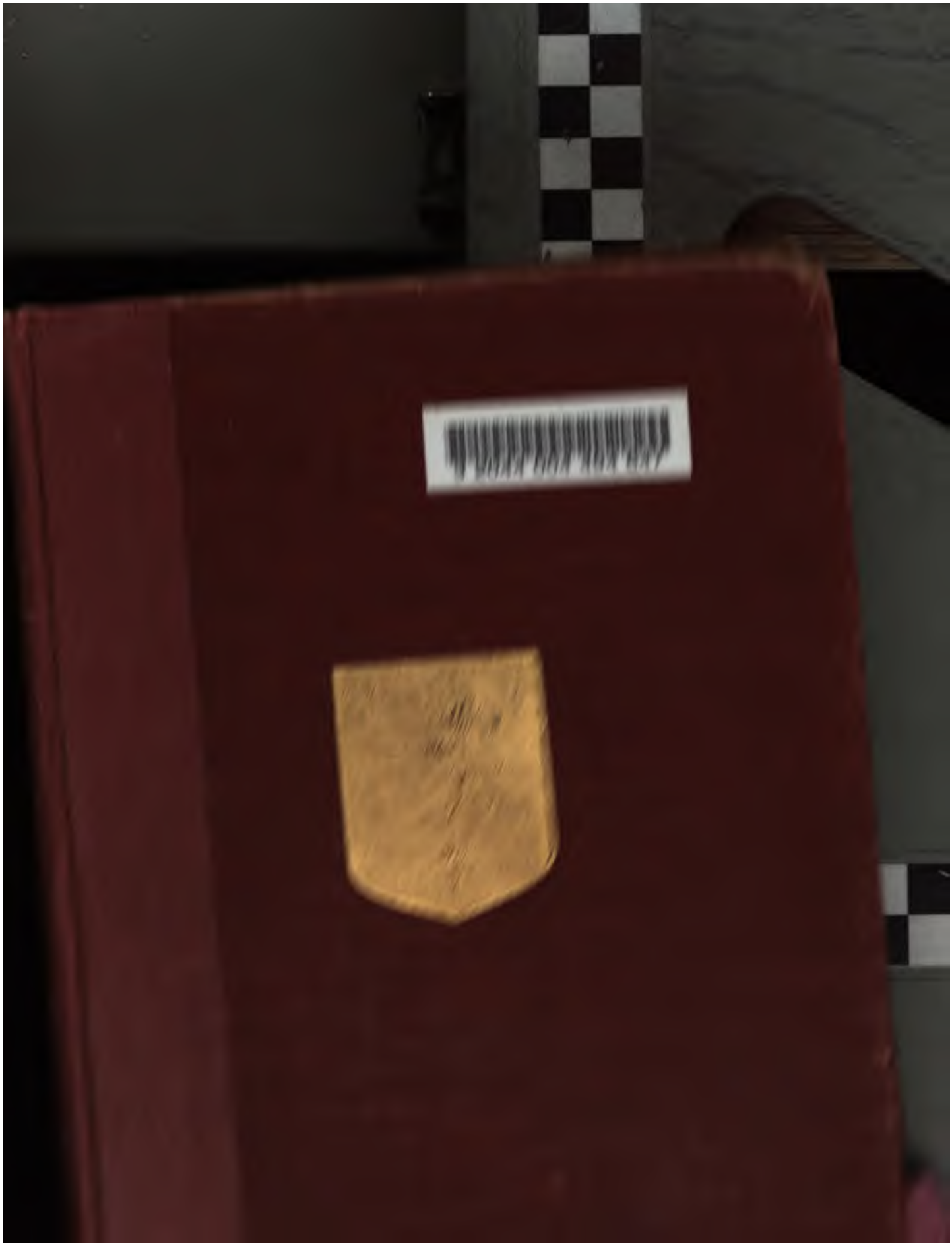
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

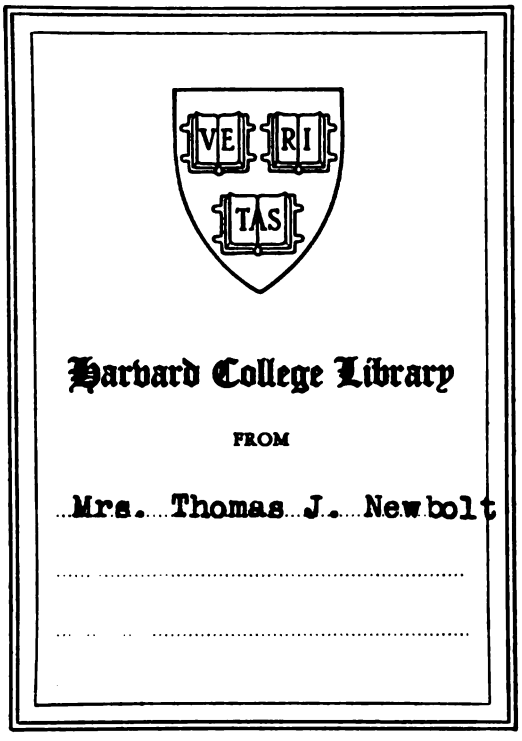
+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

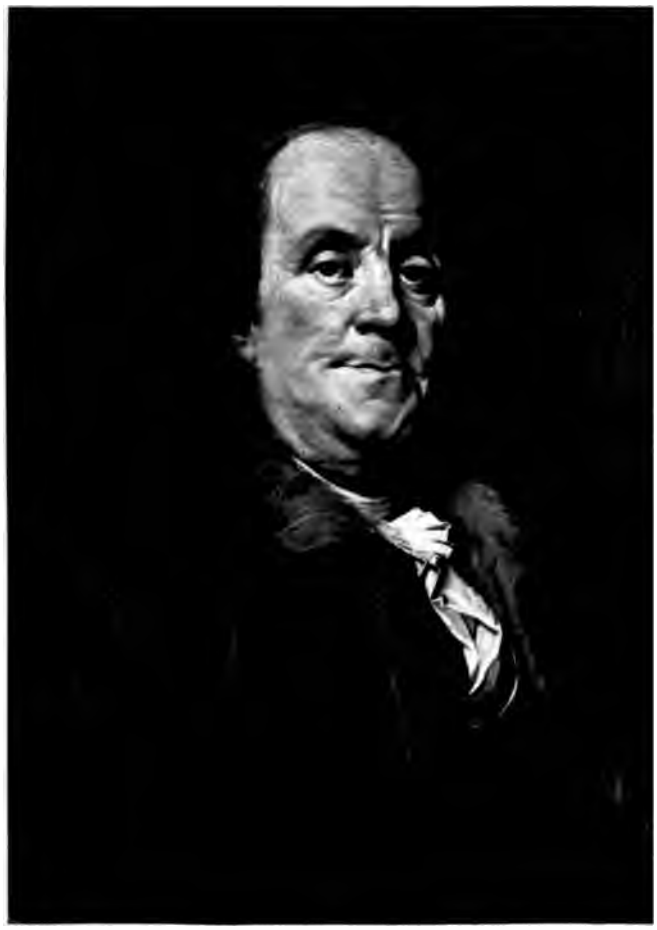


B



THE COLLECTOR'S FEDERAL EDITION OF THE WORKS OF ALEXANDER HAMILTON IS LIMITED TO SIX HUNDRED SIGNED AND NUMBERED SETS OF WHICH THIS IS NUMBER 233

G. P. Putnam's Sons



Benjamin Franklin

Reproduced by permission

The Works of Alexander Hamilton

in

Twelve Volumes

Federal Edition

The Works of

Alexander Hamilton

Edited by

Henry Cabot Lodge

"The sacred rights of mankind are not to be rummaged for among old parchments or musty records. They are written, as with a sunbeam, in the whole volume of human nature, by the hand of the Divinity itself, and can never be erased or obscured by mortal power."
[HAMILTON—*The Farmer Refuted*, 1775, Æt. 18.]

"We are laboring hard to establish in this country principles more and more *national*, and free from all foreign ingredients, so that we may be neither 'Greeks nor Trojans,' but truly Americans."—[HAMILTON TO KING, 1796, Æt. 39.]

Volume VI

G. P. Putnam's Sons
New York and London
The Knickerbocker Press
1904

US 4[illegible].15 (6)

HARVARD
UNIVERSITY
LIBRARY

The Knickerbocker Press, New York

CONTENTS

PAGE

FOREIGN RELATIONS—*Continued*:
CAMILLUS—*Continued* 3
FOREIGN POLICY:
HAMILTON TO WASHINGTON 201
FRANCE 206
THE ANSWER 215
THE WARNING 229
THE STAND 259
DETECTOR 318
A FRENCH FACTION 328
THE WAR IN EUROPE 330
ALLEGORICAL DEVICE 332
PERICLES 333
THE WHISKEY REBELLION:
HAMILTON TO WASHINGTON 339
WASHINGTON TO GOVERNORS OF PENNSYLVANIA AND NORTH AND SOUTH CAROLINA . . 349
HAMILTON TO WASHINGTON 349
CABINET OPINION 388
HAMILTON TO WASHINGTON 388
PROCLAMATION 389
SECRETARY OF STATE TO MIFFLIN . . . 394
HAMILTON TO WASHINGTON 408
HAMILTON TO CRAIG 409
HAMILTON TO WASHINGTON 409
TULLY 410
HAMILTON TO CRAIG 426

PAGE

THE WHISKEY REBELLION—*Continued:*
- SECRETARY OF STATE TO MIFFLIN . . . 427
- HAMILTON TO WASHINGTON 441
- PROCLAMATION 442
- HAMILTON TO LEE 445
- HAMILTON TO WASHINGTON 451

MILITARY PAPERS:
- MILITARY PEACE ESTABLISHMENT . . . 463
- HAMILTON TO MCHENRY 483
- HAMILTON TO WASHINGTON 486
- HAMILTON TO JAY 486

FOREIGN RELATIONS—CAMILLUS (*Continued*)

FOREIGN RELATIONS—CAMILLUS
(*Continued*)

NO. XXIV

1795.

HOWEVER uniform may have been the law of Europe in relation to the colonial establishments, no pains have been spared to create an opinion that France has been guided by a more liberal policy than the other colonizing powers, and that the regulations of her colony trade were essentially dissimilar from theirs; moreover, that her disinterestedness was so great, that she not long since proposed to our Government to establish, by treaty, a trade between us and her West India colonies equally free with that which prevails in her own intercourse with them. The object of these attempts is readily perceived.

As there was no probability that Great Britain would consent to our trading with her West India colonies on the same terms as she herself does; as it was foreseen that limitations and conditions would accompany any agreement that should be made on this subject; to extol the liberty of France, and exclaim against the monopolizing views of Great Britain, were deemed suitable means to excite a prejudice against the expected adjustment of the commercial

intercourse between us and the British West India colonies.

A comparison of the footing by which our trade stood with the French and British West India colonies, after the completion of our Revolution, and before the present war in Europe, with a concise exposition of the real views of France on the subject of a new commercial treaty, will best demonstrate the want of candor and patriotism in those Americans who have submitted to become agents in propagating these errors.

France, like England, has endeavored to secure the greatest possible portion of advantage to herself, by her colonial laws, and the concessions yielded to foreigners have been only such deviations from an entire monopoly as her own interest has rendered indispensable. France, in imitation of the English navigation law, as early as 1727, established an ordinance, confirming to the mother country the monopoly of the trade to her colonies, and excluding thereby all foreigners. Experience proved the necessity of moderating the rigor of their ordinance, and relaxations in favor of a limited foreign intercourse existed at the time when our commercial treaty with France was concluded, by the thirtieth article of which it is agreed that France will continue to the citizens of the United States the free ports, which have been and are open in her West India islands, to be enjoyed agreeable to the regulations which relate to them. A system of regulations relative to the trade of foreigners with the French islands was promulgated in 1784. This ordinance

established one free port at St. Lucie, another at Martinique, another at Guadaloupe, another at Tobago, and three others at St. Domingo, to which foreign vessels of the burthen of sixty tons and upward might carry for sale woods of all sorts, pit coal, live animals, fatted beef, salted fish, rice, Indian corn, vegetables, green hides, peltry, turpentine, and tar. This was followed by the arrêts of September, 1785, which by imposing heavy duties on foreign salted fish, and establishing large bounties on those of the national or French fishery, materially affected the foreign commerce with the French islands in this important article of supply and consumption.

Such were the duties on the foreign and the premiums on the national fish, that together they would have been equivalent to a prohibition of the former, had the national fishery been able to supply the consumption.

In return for these articles, which alone were permitted to be imported by foreigners into the French islands, and which it will be observed excluded some of our principal staples, especially *flour*, they were allowed to purchase and bring away of the productions of the islands only molasses and rum.

All cotton, coffee, sugar, and other productions (rum and molasses excepted) were prohibited; and we could, except occasionally by local relaxations of the general law, rightfully obtain none of them from the French West India islands. This was the footing of our trade under our treaty and the standing edict which preceded the French Revolution, and even this was liable to still further limitations, whenever France

should think proper to impose them; the treaty securing only a right to as free a commerce as France should grant to other foreign nations.

Great Britain has permitted the importation into her West India colonies of all the foreign articles allowed by France to be imported into her islands (salted fish and salted beef excepted), and she moreover permitted the importation of foreign tobacco, flour, meal, biscuit, wheat, and various other grains which France prohibited. In return for these commodities, Great Britain permitted the exportation from her islands to our country, of rum and molasses, and moreover of sugar, coffee, cocoa, ginger, and pimento, together with such other articles as are allowed to be carried from their islands to any other foreign country.

Great Britain prohibited the importation and exportation of most of these articles to and from all foreign nations, except the United States; France permitted the intercourse with her colonies, under the same limitations to us in common with all other foreign nations.

The articles received from us by Great Britain, for the supply of her West India islands, exceeded in variety those received from us by France for the supply of her islands; the British West Indies were, therefore, in the ordinary and established course, more extensive customers to us than the French West Indies. Again, the articles which we received from the British West Indies, and which we were prohibited from receiving from the French West Indies, were among the most valuable of their pro-

ductions, and, from the force of habit, some of them are included in the catalogue of articles of the first necessity in our consumption. In point of supply, therefore, the British were better furnishers, their colonial laws being much less restrictive than those of France.

Though the regulations of the British West India trade were more favorable to agriculture than those of France, and though the articles with which we were supplied from the British islands were more numerous and valuable than those obtained from the islands of France, the colony system of the latter was preferable to that of the former in relation to our navigation. France permitted our vessels of and above sixty tons burthen to carry and bring away the articles not prohibited in the foreign trade with her islands, while Great Britain confined the trade to her own vessels and excluded those of all foreign nations.

Difference of situation, and not of principle, produced this variety or distinction in the colony system of the two nations. France being able from her resources to supply most of the articles requisite for the consumption of her West Indies, and from her great population, having a proportionate demand for the productions of her islands, she has been carefully restrictive in the trade between her colonies and foreign countries as to the articles of import and export.

All the productions of her islands must go to the mother country, except rum and molasses; these articles were not confined to France, because they

would have directly interfered with the valuable manufacture of her brandies. On the other hand, Great Britain, being less able from her internal resources to supply the articles necessary for the consumption of her West Indies, and her population or home demand not requiring the whole productions of her islands, she has been more liberal in the trade allowed to be carried on between her colonies and foreign countries as to the articles of import and export. But her navigation being adequate to the whole trade of all her dominions, while that of France required the addition of foreign bottoms, Great Britain has excluded entirely from her colony trade the foreign vessels of all nations, while France has admitted them to share in the foreign trade permitted to her West India islands.

Both France and Great Britain relax their colonial laws in times of occasional scarcity, and when they are engaged in war; during which, the intercourse with their West India possessions is laid more open to foreigners. The catalogue of supplies is sometimes enlarged, and Great Britain, as well as France, during these relaxations, permits American vessels to resort to, and engage in the commerce of, their islands.

It is, notwithstanding, from the permanent laws alone of these nations, that we are able to infer their views in relation to their colony trade; the exceptions and deviations that become necessary, by reason of accidental scarcity or the embarrassments of war, serve only to explain more clearly the principles of the permanent system.

The result of this comparison affords no support

for the assertion that France has been less exclusive or more liberal in her colony system, than Great Britain. Both these nations have in the establishment of their colonial laws alike disregarded the interests of foreign nations, and have been equally under the control of the principles of self-interest, which ever have and ever will govern the affairs of nations.[1]

Nothing can be more erroneous, than the opinion that any nation is likely to yield up its own interest, in order, gratuitously, to advance that of another. Yet we frequently hear declarations of this kind, and too many honest citizens have surrendered themselves to this delusion; time and experience will cure us of this folly.

Equal artifice has been practised, and no less credulity displayed, on the subject of a new treaty of commerce, which, it is boldly asserted, France from the most *disinterested* motives has offered to us. It should be recollected that France already has a treaty of commerce with us, a treaty that is not limited to two years, nor twelve years, but one that is to endure forever. This treaty is as favorable to France as she can desire, or we in our utmost fondness be disposed to make. It secures to her our acquiescence in an exclusion from her Asiatic dominions, and in fresh regulations as her interest shall dictate relative to our intercourse with her West India possessions; it excludes us from her fisheries on the Banks

[1] The opinion heretofore cited of *Montesquieu*, a Frenchman, agreeing with facts, is a positive testimony that the principle of the French system, like the English, is *monopoly*.

of Newfoundland, which she was unwilling to share with us, and it gives to her every commercial favor or privilege which by treaty we may yield to any other nation, freely when freely granted, and when otherwise on yielding the same equivalent; her productions, her manufactures, her merchandises, and her ships may come into all our ports to which any other foreign productions, manufactures, merchandises, or ships may come; they are severally to pay only the *lowest* duties paid by any other nation, and no other nation in its intercourse and trade with us is, in any instance, to have a preference over her. A variety of other regulations are inserted in this treaty useful to France and not particularly disserviceable to us.

This treaty has been religiously observed and executed on our part; France has repeatedly violated it in the article which makes enemy's goods free in neutral bottoms, while it is understood she has faithfully observed it in the article that makes neutral goods lawful prize when found in enemy bottoms.

If it be true that nations, in justice to themselves, are bound to decline the abandonment of their own interest, for the purpose of promoting, at their own expense and detriment, the interest of others, ought we too readily to credit an opposite opinion? Ought we not to expect full proof of the sincerity of those declarations that are intended to produce a belief of this disinterested and self-denying course? Ought not the very proposal of such a measure, from its extraordinary nature, inspire circumspection, and put a prudent nation on its guard? If, moreover,

the overture should occur at a moment when we have ascertained that those who make it desire, and are, in fact, pursuing objects incompatible with the disinterestedness which it avows; if while it is said we wish that you should remain in peace with those who hold this language, neglect no means to engage our citizens to violate their neutral duties and thereby expose their country to war; if when we are told "we rejoice in the freedom of a sister republic," all the arts of intrigue, so much more dangerous by our unsuspicious temper, and unlimited affection for those who practise them, were employed to alienate our attachment from our own Government, and to throw us into a state of anarchy; if when the fascinating proposal of opening new channels of commerce, which were to give unbounded riches to our merchants, was received with more caution than was desired, we are told that in case of refusal, or evasion (mark the generosity), France would repeal her existing laws which had been dictated by an attachment to the Americans, what must have been our infatuation, what the measure of our folly, had we given implicit credit to words so much at variance with cotemporary actions? But it is asked, do not the letters of Mr. Genet to Mr. Jefferson, which have been published, prove that France desired and offered to enter into a new, disinterested, and liberal treaty of commerce with us? The question shall be fairly examined.

There are two letters from Mr. Genet on this subject. Immediately after his arrival at Philadelphia, in a letter to Mr. Jefferson of the 23d May, 1793, he

says: "The French republic has given it in charge to me to propose to your Government to consecrate by a true *family* compact, by a national covenant, the liberal and fraternal basis on which it wishes to establish the commercial and political system of two people whose interests are inseparably connected."

If the object of this proposal was a revision of our commercial treaty, in order to render the intercourse between us more free and advantageous, this minister was singularly unfortunate in his expressions. He might have employed the fine phrase of consecrating by a true family compact, by a national covenant, the liberal and fraternal basis on which it was wished to establish the commercial system of the two countries, and have been intelligible; but when he tells us, that he is instructed to open a negotiation with our Government, for the purpose of establishing the commercial and political system of the two countries, what are we to understand? That trade and its regulations are alone in view? Or that a family compact establishing the political as well as the commercial system of the two nations, must include likewise the league, or treaty of alliance, whereby the strength and wealth of the two nations should be closely united in the prosecution of a common object?

This ambiguous overture, if its meaning is not too plain to allow the epithet, was received in the most friendly manner by our Government, and on the suggestion that the Senate are united with the President in making treaties, it was understood between Mr. Jefferson and Mr. Genet, that the subject should be deferred till the meeting of Congress.

Before that period, however, Mr. Genet, in a letter of the 30th of September, 1793, renews the proposal to open the negotiation relative to the proposed family compact between us and France; and proves to us that our benefit was its principal exclusive object, by affectionately intimating in the conclusion of his letter, that he is further instructed to tell us, in case of refusal or evasion on our part to enter into this family agreement, that France will repeal the laws dictated by the attachment of the French for the Americans.

Had it before been doubted whether political engagements relative to war were intended to be connected with the proposed treaty, these doubts must have disappeared on the receipt of this second letter from Mr. Genet; the intimation that the laws of France which operated favorably to our trade with their dominions would be repealed, in case we refused or evaded the conclusion of a new treaty, cannot be reconciled with the belief, that this treaty was sought for from motives purely commercial, or solely to enlarge and add prosperity to our trade.

Mr. Genet at this time had so outraged our Government as to have compelled them to request his recall; he must, therefore, have been convinced, that no conference would be held with him except on points of urgent importance, and such as would not admit of delay. He was therefore answered by Mr. Jefferson on the 5th of November, that his letter had been laid before the President, and would be considered with all the respect and interest *that its objects* necessarily required; and in Mr. Jefferson's

letter to Mr. Morris of the 23d of August, we are informed that our Government were desirous to go into a commercial negotiation with France, and, therefore, requested that the powers given to Mr. Genet on that subject should be renewed to his successor. It has not appeared that this was ever done. His immediate successor, Mr. Fauchet, it is believed, gave no evidence of his having any powers relative to a commercial treaty; and if reports, which arrived with the present minister, having great marks of authenticity, may be credited, he has power only to *digest* the articles of such a treaty, not to *conclude one*.

Notwithstanding the internal evidence contained in the two letters of Mr. Genet was sufficient to have satisfied a sensible people, that something beyond a commercial treaty was connected with the proffered negotiation, and though this conjecture acquired strength from the cautious procedure of our Government on the occasion, yet these letters, and that procedure, have been pressed upon the public as conclusive evidence that France had offered, and our Government refused, to enter into a new treaty of commerce, that would have been highly beneficial to our trade and navigation.

The refutation of this opinion, so injurious to a reasonable and salutary confidence in the integrity and patriotism of our own executive Government, and which the agents of its propagation had spread far and wide, might have been more difficult, had not the minister of France, for the purpose of justifying his own conduct, published his hitherto secret instructions.

By these instructions it appears, that the essential object of this proffered negotiation, was to engage the United States to make common cause with France in the war then foreseen, and which soon broke out with Spain and England; that the advantages to be yielded by a new commercial treaty were to be purchased by our uniting with France in *extending the empire of liberty, in breaking up the colonial and monopolizing systems of all nations, and finally in the emancipation of the New World.*[1] This was laying out a large and difficult work, in the accomplishment whereof arduous and numerous perils must be met, to encounter which we were called by no obligation to others, to avoid which we were admonished by all the duties which require us to cherish and preserve our own unparalleled freedom, prosperity, and happiness.

However contradictory this extraordinary project may appear to the friendly communications that had been made by the French Government to ours; however repugnant to the soothing declarations pronounced by Mr. Genet, of the fraternal and generous sentiments of his country toward ours, and of the republican frankness and sincerity that should characterize his deportment, let the following extracts from his instructions published by himself in December, 1793, be consulted in confirmation of this statement, and as an authentic exposition of the genuine views of the French executive council in the mission of Mr. Genet—viz.:

[1] This mad scheme, the joining in which was to be the price of the proffered advantages, has since been renounced by France herself as a political chimera

"The executive council have examined the instructions given to the predecessors of the Citizen Genet in America, and they have seen with *indignation*, that while the good people of America *have expressed to us their gratitude in the most lively manner, and given us every testimony of their friendship*, both Vergennes and Montmorin have thought that the *interests of France* required, that the United States *should not obtain that political order and consistency* of which they were capable, because they would thereby quickly attain a strength which they might probably be inclined to abuse. These ministers, therefore, enjoined it upon the representatives of Louis XVI. in America, to hold a passive conduct, and speak only of the personal vows of the king for the prosperity of the United States. The same machiavelism directed the operations of the War of Independence; the same duplicity presided in the negotiations of peace. The deputies of Congress had expressed a desire that the cabinet of Versailles should favor the conquests of the Floridas, of Canada, of Nova Scotia; but Louis and his ministers constantly refused their countenance, regarding the possession of those countries by Spain and England, as useful sources of disquietude and anxiety to the Americans."

After declaring that the executive council proposes to itself a different course, and that it approves of *the overtures*, which had been made as well by General Washington, as by Mr. Jefferson, to Mr. Ternant, relative to the means of renewing and consolidating the commercial regulations between the two countries, they proceed to declare further, "that they are

inclined to extend the *latitude of the proposed commercial treaty* (observe, the first proposal of a new commercial treaty came from us, and not from France) by converting it into a national compact, whereby the two people should *combine their commercial with their political interests*, and should establish an intimate concert to befriend, under all circumstances, the extension of the empire of liberty, to guarantee the sovereignty of the people, and to punish the nations who shall continue to adhere to a colonial system, and an exclusive commerce, by declaring that the vessels of such nations should not be received into the ports of the two contracting parties. This agreement, which the French people will support with all the energy that distinguishes them, and of which they have given so many proofs, will quickly contribute to the emancipation of the New World. However vast this project may appear, it will be easily accomplished, if the Americans will concur in it, and in order to convince them of this, no pains must be spared by the Citizen Genet. For, independent of the benefits that humanity will draw from the success of this negotiation, France, at this moment, has a particular interest that requires us to be prepared to act with efficacy against England and Spain, if, as every circumstance announces, these, in hatred of our principles, shall make war upon us." In this state of things, we ought "to employ every means to reanimate the zeal of the Americans, who are also interested that we should disappoint the liberticide designs of George the Third, of which they likewise may possibly be an object." "The

executive council *has reason* to believe that these reflections, *joined to the great commercial advantages* which we are disposed to grant to the United States, will decide their Government to agree to all that the Citizen Genet shall propose to them on our part; but as from the rumors respecting our interior, our finances, and our marine, the *American administration* may observe a wavering timid conduct! The executive council, in expectation that the American Government will finally decide to make common cause with us, charges the Citizen Genet to take such steps as shall be most likely to serve the cause of liberty and the freedom of the people."

In a supplemental instruction, the executive council say: "As soon as the negotiation concerning a new treaty of commerce shall be practicable, Citizen Genet must not omit to stipulate a positive reciprocity of the exemption from the American tonnage duty." The mutual naturalization of French and American citizens, so far as respects commerce, that has been proposed by Mr. Jefferson and approved by the executive council (this, it is presumed, in the eyes of certain characters, would be free from objection, though the naturalization by treaty, of the subjects of any nation but France, would be treason against the Constitution and against liberty), "will render this exemption from the tonnage duties less offensive to the powers who have a right by their treaties to claim the same exemption, for the casus fœderis by this mutual naturalization will be entirely changed in respect to them. The reciprocal guaranty of the possessions of the two nations, stipulated in the XIth

article of the treaty of 1778, must form an essential clause in the new treaty to be concluded! The executive council, therefore, instructs Citizen Genet early to sound the American Government on this point, and to make it an indispensable condition of a free trade to the French West Indies, so interesting for the United States to obtain. It concerns the peace and prosperity of the French nation, that a people whose resources and strength increase in a ratio incalculable, and who are placed so near to our rich colonies, should be held by explicit engagements to the preservation of these islands. There will be the less difficulty in making these propositions relished by the United States, as the great commerce which will be their price, will indemnify them beforehand for the sacrifices they must make in the sequel. Besides, the Americans cannot be ignorant of the great disproportion between their means and those of the French Republic; that for a long time the guaranty will be merely nominal for them, while it will be real on the side of France. And moreover, that we shall, without delay, take measures to fulfil it on our part, by sending to the American ports, a force sufficient to shelter them from all insults and dangers, and to facilitate their intercourse with our islands and with France";—"and to the end that nothing may retard the conclusion of the negotiations of Citizen Genet with the Americans, and that he may have in his hands all the means which may be employed in forwarding the success of his exertions to serve the cause of liberty, the council, in addition to the full powers hereunto annexed, have

authorized the Minister of Marine to supply him with a number of blank letters of marque, to be delivered to such Frenchmen or Americans as should equip privateers in America; the Minister of War will likewise supply him with commissions in blank for the different grades of the army." [1]

These were extraordinary means to enable the French minister to conclude with our Government a pacific treaty of commerce. The above extracts, though not an entire translation of the whole of Mr. Genet's instructions, many parts of which are foreign to the point in discussion, are a faithful abstract of such parts of them as relate to the principles and conduct of the French monarchy toward us, and are explanatory of the views of the executive council on the subject of a new treaty of commerce. It will, I think, prove, if the assertions of that council are to be credited, that the gratitude, of which we have heard so much, ought not to be demanded on account of the principles that influenced the monarchy of France during our war, or subsequent to the peace; and furthermore, it will prove that the real view of the French executive council in the mission of Mr. Genet, was to engage us, by advantages to be conceded in a new commercial treaty, *to make common cause* with France, in the expected war with Great Britain and the coalesced powers. If, then, the established footing of our trade with the British

[1] This measure countenances a conclusion, that it was the intent of the instructions he should take the measures he did with regard to privateering and military expeditions from our territories, to force us into the war in spite of the "wavering and timid conduct of our administration."

islands has been dictated by that colonial system of monopoly which forms a fundamental law in Europe; and if, moreover, the opinion that we could have procured a new and more liberal treaty of commerce with France, without plunging our country in the present war, is an error, that has been artfully imposed on the public, by exposing these truths, the examination of the treaty with Great Britain is at once freed from the objections and aspersions that have proceeded from these errors.

CAMILLUS.

NO. XXV

1795.

It will be useful, as it will simplify the examination of the commercial articles of the treaty, to bear in mind and preserve the division that we find established by the 12th, 13th, and the 14th and 15th articles; each respects a particular branch or portion of the trade between the two countries, the regulations whereof differ from, and are severally independent of, each other. Thus one is relative to the West Indies, another to the East Indies, and a third, distinct from both the former, respects our trade with the British dominions in Europe.

That Great Britain will consent to place our trade with her West India colonies upon an equally advantageous footing with her own, is improbable; this would be doing what none of the great colonizing nations has done, or is likely to do; it would be to relinquish the principal ends of the establishment and defence of her colonies; it would be equivalent to

making her islands in the West Indies the common property of Great Britain and America, for all commercial and profitable purposes; and exclusively her own in the burden of support and defence.

The Senate have, however, and, I think, wisely, considered the terms and conditions, on which it is agreed by the 12th article that we should participate in the trade of the British West Indies, as less liberal than we may, with reason, expect. The exclusion of all vessels above the burthen of seventy tons, would diminish the benefits and value of this trade; and though we cannot calculate upon obtaining by future negotiation a total removal of a limitation on this subject, it is not altogether improbable that a tonnage something larger may be procured.

Those who are conversant with our present intercourse with the West Indies can best determine whether many vessels under seventy tons burthen are not, at this time, profitably employed in that trade. It is believed to be true, that, previous to our independence, vessels of this burthen were much engaged in that employ, as well in the Southern as in the Eastern States.

This limitation, though disadvantageous, is not the strongest objection to the 12th article: the restraining or regulating of a portion of our trade, which does not proceed from, and is independent of, the treaty, forms a more decisive reason against the article than any thing else that it contains.

The cause of this restraint is found in the commercial jealousy and spirit of monopoly which have so long reigned over the trade of the colonies. Under

our treaty with France and the French colonial laws, it has been shown that we could not procure from the French islands sugar, coffee, cocoa, cotton, or any of the other productions, molasses and rum excepted. Great Britain has seen it to be compatible with her interest to admit us to share more extensively in the productions of her islands; but she has desired to place limitations on this intercourse. To have left it entirely open and free, would have been to have enabled us not only to supply ourselves by means of our own navigation, but to have made it an instrument of the supply of other nations with her West India productions.

When we reflect upon the established maxims of the colony system, and, moreover, when we consider that an entire freedom of trade with the British West Indies might, at times, materially raise the price of West India productions on the British consumers, the supply of whom is essentially a monopoly in the hands of the British planters, we shall be the less inclined to believe that Great Britain will yield an unrestrained commerce with her West India possessions to any nation whatever.

But if this was the object of the restraint, it may be asked why it was not confined to such enumerated articles as were of the growth or production of her own islands, instead of being so extended as to comprehend all molasses, sugar, coffee, cocoa, and cotton, including even the cotton of the growth of our own country. It is very possible that the circumstances of our native cotton's becoming an article of export to foreign markets might not have occurred to our

negotiator. This would be the less extraordinary, as heretofore it has not been cultivated, except in a very limited degree, and as an article of export rather in the manner of experiment than otherwise; and as, moreover, from the expense and difficulty of separating the seeds from the cotton, we have been hardly able hitherto to class cotton among our exports. Its cultivation is said latterly to have become an object of attention in Georgia and South Carolina,—still, however, it cannot yet be considered as a staple commodity. But from the recent ingenious and simple machine for spinning cotton, it is hoped that the cultivation may be extended, so that not only our own domestic manufactures may be relieved from a dependence on foreign supply, but the catalogue of our valuable exports enriched by the addition of this inestimable production.

In answer to the question that has been stated, it may be further observed that these enumerated articles, though the productions of different territories, being so much alike as not easily to be distinguished, it is probable that the difficulty in discriminating the productions of the British islands from those of a different growth was supposed to be so great, that an apprehension was entertained that the prohibition to re-export the former would be easily evaded and illusory, while the latter remained free.

This apprehension, however, it is believed, was carried too far; as, on a minute examination of the subject, it will be found that our laws relative to drawback, with a few analogous provisions in addition, can be made sufficiently to discriminate and

identify, on re-exportation, all such articles of the growth of the British islands as may be within our country, and that they will afford the same security for a faithful and exact execution of the prohibition to re-export such articles as that on which our own Government relies against frauds upon the revenue. [The application of these laws, with the requisite additions and sanctions, may be secured by a precise stipulation for that purpose in the treaty, in such manner as would afford an adequate guard against material evasions.

But though the conduct of the Senate in withholding their assent of this article is conceived, upon the whole, to be well judged and wise, yet there were not wanting reasons of real weight to induce our negotiator to agree to it as it stands.

The inviolability of the principles of the navigation act had become a kind of axiom, incorporated in the habits of thinking of the British Government and nation. Precedent, it is known, has great influence, as well upon the councils as upon the popular opinions of nations!—and there is, perhaps, no country in which it has greater force than that of Great Britain. The precedent of a serious and unequivocal innovation upon the system of the navigation act dissolved, as it were, the spell by which the public prejudices had been chained to it. It took away a mighty argument derived from the past inflexibility of the system, and laid the foundation for greater inroads upon opinion, for further and greater innovations in practice. It served to strip the question of every thing that was artificial and to

bring it to the simple test of real national interest, to be decided by that best of all arbiters, experience.

It may, upon this ground, be strongly argued that the precedent of the privilege gained was of more importance than its immediate extent — an argument certainly of real weight, and which is sufficient to incline candid men to view the motives that governed our negotiator in this particular with favor, and the opinion to which he yielded with respect. It is perhaps not unimportant by way of precedent, that the article, though not established, is found in the treaty.]

Though the 12th article, so far as respects the terms and conditions of the trade to the British islands, forms no part of the treaty, having been excepted, and made the subject of further negotiation, it may nevertheless be useful to take notice of some of the many ill-founded objections that have been made against it; of this character is that which asserts that the catalogue of articles permitted to be carried by us to the British islands, may be abridged at the pleasure of Great Britain, and so the trade may be annihilated.

The article stipulates that we may carry to any of his Majesty's islands and ports in the West Indies, from the United States, in American vessels, not exceeding seventy tons, any goods or merchandises "being of the growth, manufacture, or production of the said States, *which it is or may be* lawful to carry to the said islands, from the said States, in British vessels"; not all such articles as it is and may be lawful to carry, but in the disjunctive, all such as

it is or may be lawful to carry; in other words, all such articles as it is now lawful to carry, together with such others as hereafter it may be lawful to carry. The catalogue may be enlarged, but cannot be diminished. [It may also be remarked incidentally that this objection sounds ill in the mouths of those who maintain the essentiality of the supplies of this country, under all possible circumstances, to the British West Indies; for if this position be true, there never can be reasonable ground of apprehension of too little latitude in the exportation in British vessels, which is to be the standard for the exportation in ours.]

This article has been further criticised on account of the adjustment of the import and tonnage duties payable in this trade, and it has been attempted to be shown that the footing on which we were to share in the same would, on this account, be disadvantageous, and the competition unequal. What is the adjustment? The article proposes that British vessels employed in this trade shall pay, on entering our ports, the alien tonnage duty payable by all foreign vessels, which is now fifty cents per ton; further, the cargoes imported in British bottoms from British West Indies shall pay in our ports the same impost or duties that shall be payable on the like articles imported in American bottoms; and on the other side, that cargoes imported into the British islands, in American bottoms, shall pay the same impost or duties that shall be payable on the like articles imported in British bottoms—that is to say, the cargoes of each shall pay in the ports of the

other only native duties, it being understood that those imposed in the British West Indies, on our productions, are small and unimportant, while those imposed in our ports, on the productions of the West Indies, are high, and important to our revenue. The vessels of each shall pay in the ports of the other an equal alien tonnage duty, and our standard is adopted as the common rule.

Is not this equal? Can we expect or ask that British vessels should pay an alien tonnage duty in our ports, and that American vessels should enter their ports freely, or on payment only of native tonnage duties? Can we in equity require them to pay, on the importation of their cargoes in British vessels, an addition of ten per cent. on the duties payable on the importation of the like articles in American vessels, and at the same time demand to pay no higher or other duties on the cargoes carried in our vessels to the British islands, than those payable by them on the like articles imported in British vessels? The very stating of the question suggests to a candid mind an answer, that demonstrates the injustice of the objection. [To expect more, were to expect that in a trade in which the opinions and practice of Europe contemplate every privilege granted for a foreign nation as *a favor*, we were by treaty to secure a greater advantage to ourselves than would be enjoyed by the nation which granted the privilege.]

But it is added that our laws impose a tonnage duty of six cents per ton on the entry of American vessels engaged in foreign trade, and it is not known that British vessels pay any tonnage duty on their

entry in their ports in the West Indies; and so uniting the two entries, that is, the entry in the West Indies and the entry on a return to our ports, an American vessel will pay fifty-six cents per ton, when the British vessels will pay only fifty cents per ton. If the British Government impose no tonnage duty on their own vessels, and we do impose a tonnage duty on ours, this certainly cannot form an objection against them. They are as free to refrain from the imposition of a tonnage duty on their own ships as we are to impose one on ours. If their policy is wiser than ours in this respect, we are at liberty to adopt it, by repealing the tonnage duty levied on American navigation, which, if we please, may be confined to the particular case; the effect of such a measure, as far as it should extend, though the duty is small, would be to add a proportionable advantage to our shipping in foreign competition. But the object of the articles in this particular is to equalize, not the duties that each may choose to impose on their own vessels, but those that they shall impose on the vessels of each other; and in this respect the article is perfectly equal. [It is perhaps the first time that the objection of inequality was founded on a circumstance depending on the laws of the party affected by it, and removable at his own option.]

This view of the subject authorizes a belief, that, in the revision of the article, a modification of it may be agreed to that will prove satisfactory. Indeed, from the short duration of the article, taken in connection with the expressions made use of towards

the close of it, relative to the renewal of the negotiation, for the purpose of such further arrangements as shall conduce to the mutual advantage and *extension* of this branch of commerce, we may infer that Great Britain contemplates a more enlarged and equal adjustment on this point.

The relaxations which now exist in the colonial systems, in consequence of the necessities of war, and which will change to our disadvantage with the return of peace, have been considered by some as the permanent state of things. And this error has had its influence in misleading the public in respect to the terms and conditions on which we may reasonably expect to participate in trade to the West Indies. But let it be remembered, that the restoration of peace will bring with it a restoration of the laws of limitation and exclusion, which constitute the colonial system. Our efforts therefore should be directed to such adjustment with Great Britain on this point, as will secure to us a right after the return of peace, to the greatest attainable portion of the trade to her islands in the West Indies.

It has been alleged, should the expected modification of this article retain its present stipulation on the subject of import and tonnage duty, that as France by treaty may claim to enjoy the rights and privileges of the most favored nation, she would demand an exemption from the ten per cent. on the duties upon the productions of the West Indies imported in foreign bottoms, and would moreover be free to impose an alien tonnage on our vessels entering her ports in the West Indies, equal to that im-

posed on her vessels in our ports. This is true. But in order to make this demand, France must agree, *by treaty*, to open all her ports in the West Indies, to give us a right to import into them flour, bread, tobacco, and such other articles as Great Britain should permit, and which France by her permanent system prohibits; she must also concede to us a right to purchase in her islands, and bring away sugar, coffee, and pimento, which by the same system she also prohibits; she must do all this, because, by our treaty with her, she can only entitle herself to a special privilege granted to another nation, by granting on her part to us the equivalent of what was the consideration of our grant. Should France be inclined to arrange the trade between us and her islands, we certainly shall not object; because, besides the right to such an arrangement, it would be more advantageous to us than that which now regulates our intercourse with her West Indies.

So much of the 12th article as respects its duration and the renewal of the negotiation previous to the expiration of two years after the conclusion of the war, in order to agree in a new arrangement on the subject of the West India trade, as well as for the purpose of endeavoring to agree whether in any, and in what cases, neutral vessels shall protect enemy's property, and in what cases provisions, and other articles not generally contraband, may become such, form a part of the treaty as ratified by the President. These clauses sufficiently explain themselves, and require no comment in this place. They, however, prove one point, which is, that after

every effort on the part of our negotiator, the parties were not able to agree in the doctrine that free bottoms should make free goods, nor in the cases in which alone provisions and other articles not generally contraband, should be deemed such. Leaving, therefore, both these points precisely as they found them (except in respect to provisions, the payment for which, when by the law of nations liable to capture as contraband, is secured), to be regulated by the existing law of nations, it is stipulated to renew the negotiation on these points at the epoch assigned for the future adjustment of the West India trade, in order then to endeavor to agree in a conventional rule, which, instead of the law of nations, should thereafter regulate the conduct of the parties in these respects.

[The 11th article has been passed over in silence as being merely introductory and formal.]

CAMILLUS.

NO. XXVI

(From the *Minerva*.)[1]

1795.

The British trade to their possessions in the East Indies, as well as to China, is a monopoly vested by the Legislature in a company of merchants. No other persons in Great Britain, nor in any of her dominions or colonies, can send a vessel to, or prosecute trade independent of the company, with any part of Asia. The right to trade with their possessions

[1] The first twenty-five numbers of Camillus appeared in the *Argus*. The remainder came out in the *N. Y. Minerva*. All were reprinted by Fenno in the *Gazette* of the United States.

in India is not only refused to all British subjects, the India Company excepted, but is one that Great Britain has never before yielded by treaty to any foreign nation. By the terms of the charter to the India Company, among a variety of limitations, they are restrained and confined to a direct trade between Asia and the port of London; they are prohibited from bringing any of the productions of India or China directly to any part of America, as well to the British colonies as to our territories; and moreover, they are restrained from carrying any of the productions of Asia directly to any part of Europe, or to any port in Great Britain, Scotland, or Ireland, except the single port of London.

The 13th article stipulates, that our vessels shall be admitted in all the seaports and harbors of the British territories in the East Indies, and that our citizens may freely carry on a trade between said territories and the United States in all such articles, of which the importation or exportation shall not be entirely prohibited; provided only that when Great Britain is at war we may not export from their territories in India, without the permission of their local government there, military stores, naval stores, or rice. Our vessels shall pay in this trade the same tonnage duty as is paid by British vessels in our ports; and our cargoes on their importation and exportation shall pay no other or higher charges or duties than shall be payable on the same articles when imported or exported in British bottoms; but it is agreed that this trade shall be direct between the United States and the said territories; that the

article shall not be deemed to allow the vessels of the United States to carry on any part of the coasting trade of the British territories in India, nor to allow our citizens to settle or reside within the said territories, or to go into the interior parts thereof, without the permission of the British local government there.

The British trade to their territories in the East Indies is carried on by a corporation, who have a monopoly against the great body of British merchants. Our trade to the same territories will be open to the skill and enterprise of every American citizen. The British trade to these territories is direct, but confined to the port of London; our trade to the same must likewise be direct, but may be carried on from and to all our principal ports.

The article gives us a right in common with the India Company to carry to these territories, and to purchase and bring from thence, all articles which may be carried to or purchased and brought from the same, in British vessels: our cargoes paying native duties, and our ships the same alien tonnage as British ships pay in our ports. This trade is equally open to both nations; except when Great Britain is engaged in war, when the consent of the British local government is required in order to enable us to export naval stores, military stores, and rice; a limitation of small consequence, none of the articles except nitre being likely to form any part of our return cargoes. Though this article is one against which the objection of a want of reciprocity (so often and so uncandidly urged against other

parts of the treaty) has not been preferred, it has not, however, escaped censure.

It is said that we are already in the enjoyment of a less restrained commerce with the British territories in India, and that the treaty will alter it for the worse; inasmuch as we thereby incapacitate ourselves to carry on any part of the coasting trade of the British territories in India, and as we relinquish the profitable freights to be made between Bombay and Canton, and likewise those sometimes obtained from the English territories in Bengal to Ostend.

It would seem a sufficient answer to say, that this trade has heretofore existed by the mere indulgence of those who permitted it; that it was liable to variations; that a total exclusion, especially had it been of us in common with other foreign nations, could have afforded no just ground of complaint; that the relaxation which has hitherto given us admission to the British Indian territories, was not a permanent, but a mere temporary and occasional regulation, liable to alteration, and by no means to be demanded as the basis of an intercourse to be adjusted by compact with a foreign nation, which would no longer leave the power of alteration in either of the parties.

But in respect to the first objection the article amounts to this, that the rights which it does grant shall not by implication be construed to give a right to carry on any part of the British coasting trade in India.

If we have before shared in this trade by permission, nothing in the article will preclude us from enjoying the same in future. If we did not participate in it, nothing in the article impairs either the

authority of the British local government to permit our participation or our capacity to profit by such permission. This objection, therefore, falls to the ground, since the coasting trade remains as it was before the treaty was formed.[1]

[Further, according to my information.]—It is not the trade between the East Indies and China, as has been erroneously supposed by some persons, but the exportation of rice and other articles, which are exchanged between the British territories in the hither and further Indies, that is denominated the coasting trade of the British territories in India. The importance of this trade is not well understood; nor am I able to say whether we have heretofore been allowed to carry it on. If we have, the little that we have heard of it leads to an opinion that it is not an object of much consequence. Let it, however, be granted that hereafter we shall not be allowed to engage in it. Shall we have more reason to complain of this exclusion, than we have that we are refused a share in the coasting trade of the European dominions of Great Britain? or that we are excluded from the coasting trade between their islands in the West Indies? or than the British themselves have, that by our prohibiting tonnage duty (being fifty cents per ton on entry of a foreign vessel, when our own coasting vessels pay only six cents per ton, for

[1] [The terms used clearly denote this and nothing more. They are: "It is also understood that the *permission granted by this article* is not to extend to *allow*." This does not negative any preëxisting indulgence, but merely provides that the main grant shall not convert the *revocable indulgence*, if any there was in this particular, into an *irrevocable right* by treaty.]

a year's license) they are excluded from sharing in our coasting trade—a branch of business that already employs a large proportion of our whole navigation, and is daily increasing?

In respect to the second and third objections, it may be remarked, that so far as the trade has been heretofore enjoyed, it has been in consequence of an exception from, and relaxation in, the system by which the European commerce has been regulated; that having depended on the mere occasional permission of the local government, we may safely infer (though it may have been supposed incompatible with the discretionary powers vested in that government, to confer by treaty a positive right to carry on the trade in question) that so long and as often as the interest that has heretofore induced the grant of this permission shall continue or exist, the permission will be continued or renewed. The stipulation, restraining the trade, may, if the parties see fit, be dispensed with, and the trade may be enlarged, or made free. It being a contract only between them and us, the parties are free to remodify it; and without a formal alteration, if those in whose favor the restraint is made consent to remove it, the other party is released from the obligation to observe it.[1]

Again—Surat, which is in the neighborhood of

[1] [This has been affected to be questioned on account of what is called the peremptoriness of the expressions (to wit): "It is *expressly agreed* that the vessels of the United States *shall not carry*," etc. But there is no real room for the question. In a contract between two parties, whether individuals or nations, where a restraint is imposed upon one for the benefit of another, it is always an implied condition of the restraint that it shall continue, *unless dispensed with* by the party for whose benefit it is imposed. Thus the British Government

Bombay, is the emporium of Guzerat, and of the northern portion of the Malabar coast; the cottons shipped from Bombay to Canton are frequently first sent from Surat to Bombay. Surat belongs to the native powers to which we have free access. If the transportation of cotton and some few other commodities from the coast of Malabar to Canton is an important branch of our commerce, what will prevent our prosecuting it from Surat or any other free port in the hither Indies?

That it may be undertaken from the ports of the native powers is rendered probable by the circumstance, that these freights are supplied principally or alone by the native or black merchants, whose residence would naturally be in the ports under native jurisdiction more frequently than in those under the jurisdiction of any of the foreign powers.

But is it not true (and will not candor admit it?) that the trade to the Asiatic dominions of the European powers has usually been confined to the nation to whom such territories belong? In our treaty with Holland, have we not even stipulated to respect their monopoly of this trade? And by our treaty with France, a nation whose liberal policy is said to have laid us under eternal obligations of gratitude, have we acquired the slightest pretensions, much less a right, to resort to, or trade with, any part of their Asiatic territories?

in India may remove the restraint, by continuing the indulgence in this respect heretofore granted. And it seems to me clear that the law which the United States are to pass, for enforcing the prohibition, may, with good faith, be qualified with this provision, "*unless by permission of the British* Government *in India.*"]

A late decree of the convention which opened to us the ports in their West Indies, likewise laid open their remaining territories in Asia. But this measure, proceeding from the necessities of the war and their inability to carry on their foreign commerce, will change hereafter, as heretofore it has done, with the establishment of peace. Did this opinion require to be strengthened, it is abundantly confirmed by the navigation act, decreed by the convention; the operation whereof is suspended for the same reason that induced the opening to foreigners that trade to their colonies and territories in the West and East Indies.

The British for more than a hundred years excluded foreigners from a share in their East India trade; for a few years past they relaxed in the rigor of this system. We have availed ourselves of this circumstance, and shared with them in their India commerce. But this permission can be viewed only as an occasional departure from a general law, which may be affected by a change of circumstances; the duration of which, therefore, is uncertain. The loss and inconvenience to which our merchants may be exposed from the prosecution of a trade depending on regulations arising from inconstant circumstances, and which frequently vary, may, in some measure, be guarded against, where the scene is not remote, and the alterations in the laws can be known soon after they are made. But in the Asiatic and in our other distant commerce, it is of importance that the laws under which an adventure is begun should be permanent. Losses to a considerable amount have

been experienced by some of our merchants, who have undertaken distant voyages in the expectation of the continuation of these temporary regulations. The trade, for example, with the Cape of Good Hope (which the Dutch Government ordinarily monopolize to their own people) was some time since opened to foreigners, and some of our citizens profited by it; but others, who had engaged in large adventures to that market, suffered no small disappointment and loss in finding themselves excluded, upon their arrival, by a repeal of the permission to foreigners to trade there. It must then be considered as an important object secured, in respect to the principal proportion of our India trade, that alone which is capable of being pursued as a branch of our commerce, that the treaty turns a *favor* into a *right*, and that our direct intercourse with the British territories in the East Indies, in all respects as broad as that of Great Britain herself (except in the articles of rice, naval and military stores, when Great Britain is engaged in war), instead of being an uncertain and hazardous trade, as heretofore, from its precarious nature, it has been, will, hereafter, be as certain as any in which our merchants shall engage.

It is further alleged, by way of objection to this article, that it does not secure to our citizens a right to reside and settle in the British territories in India, without the consent of the British local government. The observation that has been made on a similar objection, in respect to the coasting trade in India, is equally applicable to this. The article leaves subjects precisely in the situation in which it found them.

But let it be remembered that the disproportion between the numbers of the native Indians and the foreigners inhabiting their country, is more than one thousand of the former to one of the latter; that the most exact discipline and subordination among the foreigners are therefore essential to the preservation of the British authority over that country; that no foreigner, or even a British subject, is allowed to reside there, except in the character of a servant of the company, or of a licensed inhabitant; that it has long been held as a sound opinion, that unrestrained liberty to the Europeans to emigrate to and settle among the Indians, would, in a short time, overturn and destroy the British empire in India. This danger would by no means be diminished by conferring a right upon the Americans, freely to reside and settle in India; that we shall be allowed to reside and settle there by permission of the local British government, is fairly to be inferred from the article. But an [absolute right] to an entire liberty on these points might evidently be dangerous to the British government over India—[and in prudence could not have been stipulated].

The advantageous footing on which the trade is placed is so evident, that those who had no reliance on the objections urged against it, but who, nevertheless, have been unwilling to allow the treaty any merit on the score of this article, have endeavored to show that our India trade is of little importance, and of small value.

Whatever article can be supplied by the India Company may likewise be supplied by us, and some

of them on better terms by us than by them. The reports of the committee of the directors of the East India Company, published in 1793, when their charter was renewed, afford useful information on this subject, and disclose facts which show the advantages that we shall possess in this trade over the company. They admit, that in the articles of iron, wines, canvas, cordage, arms, and naval and military stores, foreigners can enter into a beneficial competition with them; and that canvas and cordage and, we may add, all naval stores and several other articles can always be furnished in India by foreigners cheaper than by the Company.

If we appreciate the advantage we have over them, in such articles of supply as are of our own growth or production, as well as in the wines not unusually procured by touching at Madeira on the outward voyage to India, and compare it with the advantage that they have over us in the few articles of choice which they purchase at the first hands, and which we must import in order to re-export to India, it is probable that our cargoes to India will, on the whole, be laid in as advantageously, if not more so than those of the India Company. If we consider the vast extent of territory, the numerous population, and the established manufactures of India, so far from supposing that a free trade to that country will be of little value to a young and enterprising nation, whose manufactures are still in their infancy, we ought rather to conclude that it is a country with which we should be solicitous to establish a free trade and intercourse.

Every one who has bestowed the slightest attention upon the foreign manufactures consumed in our country, must have observed the general and increasing use of those of India, owing to the better terms on which they can be procured from Asia than from Europe. Though no document is at hand that will show the value of the annual importations from India, it is stated by Mr. Coxe, in his *View of the United States*, that the amount in value of our importations from Asia is more than one fifth of the value of our whole annual consumption of foreign commodities. It is true that the porcelain, silks, nankeens, and teas of China form a large portion of this annual importation. But, after a full deduction on this account, a great and profitable branch of our commerce will be found in our trade to the East Indies. It should be remembered, [also,] that it is not the consumption of our own country that regulates the quantity of India goods that we import; other countries have been supplied through us with the fabrics and productions of both India and China. The treaty will enlarge this demand.[1]

Several circumstances calculated to give our trade with Asia an advantage against foreign competition, and a preference to our trade with Europe, are deserving of attention.

First.—The direct trade between us and Asia, including the East Indies, as well as China, cannot be prosecuted by the British East India Company,

[1] Perhaps from the certainty of the rights which it confers, it may invite a foreign capital to extensive enterprises, in which the United States will be an *entrepôt* between India and a great part of Europe.

their ships being obliged to return to the port of London, and there to discharge.

Second.—The difference between the duties on Asiatic goods imported in American bottoms direct from Asia, and the duties imposed on the same goods in foreign bottoms from Asia or from Europe; being on all articles a favorable discrimination, and in the articles of teas, the duties on those imported in foreign bottoms being fifty per cent. higher than on those imported in American bottoms.

The particular difference of duties on Asiatic goods imported in American and in foreign bottoms, so favorable to our own navigation, will not be affected by the right reserved by Great Britain to impose countervailing duties in certain cases, that right being relative to the intercourse between the United States and the British territories in Europe.

Third.—The European intercourse with Asia is, in most cases, conducted by corporations or exclusive companies, and all experience has proved that in every species of business (that of banking and a few analogous employments excepted), in conducting of which a competition shall exist between individuals and corporations, the superior economy, enterprise, zeal, and perseverance of the former will make them an overmatch for the latter; and that while individuals acquire riches, corporations engaged in the same business often sink their capital and become bankrupt. The British East India Company are, moreover, burdened with various terms and conditions, which they are required to observe in their Asiatic trade, and which operate as so many ad-

vantages in favor of their rivals in the supply of foreign markets. The company, for example, are obliged annually to invest a large capital in the purchase of British manufactures, to be exported and sold by them in India; the loss on these investments is considerable every year, as few of the manufactures which they are obliged to purchase will sell in India for their cost and charges; besides, from the policy of protecting the home manufactures, the Company are, in a great measure, shut out from supplying India goods for the home consumption of Great Britain. Most of the goods which they import from India are re-exported with additional charges, incurred by the regulations of the Company, to foreign markets, in supplying of which we shall be their rivals, as, from the information of intelligent merchants, it is a fact that Asiatic goods, including the teas of China, are [on an average] cheaper within the United States than in Great Britain.

Fourth.—The manufactures of Asia are not only cheaper here than in Europe, but in general they are cheaper than goods of equal quality of European manufacture. So long as from the cheapness of subsistence and the immense population of India (the inhabitants of the British territories alone being estimated at forty millions) the labor of a manufacturer can be procured from two to three pence sterling per day, the similar manufactures of Europe, aided with all their ingenious machinery, are likely, on a fair competition, in almost every instance, to be excluded by those of India. So apprehensive have the British Government been of endangering their home

manufactures by the permission of Asiatic goods to be consumed in Great Britain, that they have imposed eighteen per cent. duties on the gross sales of all India muslins, which is equal to twenty-two per cent. on their prime cost. The duties on coarser India goods are still higher, and a long catalogue of Asiatic articles, including all stained and printed goods, is prohibited from being consumed in Great Britain.

The British manufacturers were not satisfied even with this prohibitory system; and on the late renewal of the Company's charter, they urged the total exclusion from British consumption of all India goods, and, moreover, proposed that the Company should be held to import annually from India a large amount of raw materials, and particularly cotton, for the supply of the British manufacturers.

Those facts are noticed to show the advantages to be derived from a free access to the India market, from whence we may obtain those goods which would be extensively consumed even in the first manufacturing nations of Europe, did not the security of their manufactories require their exclusion.[1]

CAMILLUS.

NO. XXVII

1795.

The third article contains the terms and conditions of the trade and intercourse that it authorizes

[1] [Great Britain has made it a serious point, in which she has in more than one instance succeeded, to engage foreign powers (the emperor was one) to renounce establishments for carrying on the trade with India, from their own territories; yet this treaty opens all the territories to us. And yet it is not only denied merit, but criminated, in this very particular.]

between us and the British colonies on the American continent. The twelfth article was intended to adjust the trade between us and the British islands in the West Indies. The thirteenth article secures to us a direct trade with the British territories in the East Indies; and it is the office of the fourteenth and the fifteenth articles to ascertain and establish the terms of the intercourse and trade between the territories of the United States and the British dominions in Europe.

The fourteenth article establishes a perfect and reciprocal liberty of commerce and navigation between the territories of the United States and of the British dominions in Europe; stipulates that *the people and inhabitants* of the two countries respectively, namely, of the United States and of the British dominions in Europe, shall have liberty to come with their ships and cargoes to the ports, cities, and places of each other, within the territories and dominions aforesaid, to resort and reside there, without limitation of time, to hire houses and stores for the purpose of commerce; and that the merchants and traders on each side shall enjoy, for their commerce, the fullest protection and security, subject, notwithstanding, in respect to the stipulations of this article, to the laws of the two nations respectively.

As this article, in the customary language employed in the introductory articles of commercial treaties, speaks of a perfect liberty of commerce and navigation, without excepting any commodity, or specifying any impost or duty, it was possible that a latitude or freedom of trade, inconsistent with the

revenue laws and policy of the two nations, might have been claimed under it; hence the propriety of the provision with which the article concludes, and which reserves to the parties respectively the power of avoiding this inconvenience, by continuing and enacting such laws as may be proper for the purpose.

But as under this power again, partial duties, and even partial exclusions, might have been established, whereby ships and merchandises, as well as the articles of the growth, produce, or manufacture of one of the parties, might have been made liable to higher duties and imposts in the territories of the other, than the ships and similar merchandises, and articles of the growth, produce, or manufacture of other nations; or whereby one of the parties might prohibit the importation or exportation, by the other, of any article to and from his territories, the importation or exportation whereof was at the same time free to some other nation: in order to prevent such inequalities, and to secure effectually to the parties a right to carry on their trade with each other, on terms equally advantageous and extensive with those established by either with any other nation, the fifteenth article stipulates:

1. That no other or higher duty shall be exacted or paid on the ships and merchandises, nor on the articles of the growth, produce, or manufacture of one of the parties, on their entry or importation into the territories of the other, than shall be payable on the like ships and merchandises, and on similar articles of the growth, produce, or manufacture of any other nation.

2. That no article, the importation or exportation of which by either party, to or from the territories of the other, is prohibited, shall be imported or exported to or from the same by any other foreign nation; and that every article allowed to be imported or exported to or from the territories of either party, by any foreign nation, may be imported or exported to or from the same, by the parties respectively.

By these stipulations it is agreed, that the people and inhabitants of the United States and of the British dominions in Europe shall have the right to carry on trade between the said territories in all articles and commodities in which any other foreign nation may trade with either of the parties; that the imposts or duties on any article in the course of such trade shall be no other or higher than the lowest imposts or duties paid by any other foreign nation on the like article; that both parties shall remain free, totally to prohibit the importation or exportation, to or from their respective territories, of any species of goods or merchandise, or to increase the existing duties, or to impose new ones, on the importation of any species of goods or merchandises into their respective territories; such prohibitions and duties operating equally against all foreign nations. So far as respects the interchange of commodities between the parties, these stipulations breathe the spirit of reciprocity. The residue of the fifteenth article principally relates to the navigation which the parties shall employ in this trade.

The first clause of the fifteenth article, in the spirit of those treaties which mutually confer the right of

the most favored nations, stipulates that no other or higher duties shall be paid by the ships of the one party in the ports of the other, than such as are paid by the like vessels of all other nations.

By our laws, a difference exists between the tonnage duty paid by an American vessel, and that paid by a foreign vessel in our ports: the American vessel pays only six cents per ton on her entry; the foreign vessel, on her entry, pays fifty cents per ton, and about twenty per cent. more duties on all teas imported from Europe, and ten per cent. more duties on the importation of other goods, than are payable on the importation of the same goods in an American vessel.

By the British laws, the difference between the duties paid by British and foreign vessels in the British ports in Europe is less than that which exists in our ports. The consequence is, that a British vessel, of a given burthen, pays considerably more tonnage duties in the trade between our territories and the British ports in Europe, than is paid by an American vessel of the same burthen, engaged in the same trade.

The trade being laid open to both parties, the principle of equalization of duties was very naturally deemed an equitable basis of treaty. This could be effected by lowering the American alien duties to the British standard, or by raising those of Great Britain to the American standard. The former might have been inconvenient to our revenue [especially since, if it was not general, it would have formed, in respect to foreign nations, an unpleasant discrimination in our laws].

The American tonnage duty, therefore, was left to operate; and by the fifteenth article, it is agreed, that the British Government shall reserve a right to raise the tonnage duty on our vessels entering their ports in Europe, so as to make it *equal* to the tonnage duty payable by their vessels entering our ports; and in order to balance the difference of duties on goods imported into our ports by American or by British vessels, the effect whereof is the same as that which proceeds from an alien tonnage duty, the article further agrees, that the British Government shall reserve a right to impose such duty as may be adequate to effect this end. The preceding clause of this article stipulates, that the vessels and cargoes of each shall pay no higher or other duties than those imposed on the like vessels and cargoes of all other nations. It was therefore necessary to reserve a right to increase against us their alien tonnage duty, and to impose the countervailing duty in question; as, without such reservation the same could not have been done, unless by laws equally operating against all other nations [which would have been unjust in reference to such of them as might not, like us, have discriminated in their duties between their own and foreign vessels].

Two methods have been suggested by which this countervailing power might be executed.

One by imposing a *pro rata* duty on the importation of goods into the British ports in Europe by American vessels, equal to the difference between the duties payable in our ports on the importation of goods by American or British vessels.

[The other] by imposing the identical duty on the

exportation of goods from the British ports in Europe by American vessels, which forms the difference between the duties payable on the importation of the same goods into our ports by American or British vessels.

As the articles imported by our vessels into the British ports in Europe are dissimilar from those imported from the same into our ports, one rule of difference would not effect the equalization sought for; and as our difference of duties is not the same on all articles, being higher on some than on others, [and as, moreover, the quantities and amount of different articles differ widely, and are liable to continual proportional variations,] no uniform [average] rule of countervailing these differences can be devised. The [correct] execution, therefore, of this power, in the method first suggested, is impracticable, and [it is presumed] must be discarded.

The power, then, [it would seem,] can only be [equitably] exercised by imposing on the articles which we shall export in American vessels from the British ports in Europe, a duty identically the same as that which constitutes, in any case, the difference of duty, payable in our ports, on the same articles imported from the British ports in Europe by a British or an American vessel. Thus they may impose on tea and other Asiatic goods, as well as on the European goods which we shall export from the British ports in Europe, the identical duty or the same sum which constitutes the difference of duties payable in our ports on the importation from thence of the same articles by an American or a British vessel.

The right to countervail our alien tonnage duty by imposing an alien tonnage duty on our vessels entering the British ports in Europe, equal to that which shall be payable on their vessels entering our ports, will continue so long as the commercial treaty shall endure, and will apply to any future increase of the tonnage duty on foreign vessels that we may establish. It is, however, stipulated in the conclusion of the fifteenth article, that we shall abstain from increasing the tonnage duty on British vessels, and also from increasing the difference that now exists between the duties payable on the importation of any articles into our ports in British or in American vessels, until the expiration of two years after the termination of the war between France and Great Britain. But we are free to increase the one or the other, after the expiration of that period. And though the British Government will have a right to countervail, by additional tonnage duties on our vessels, any increase of that duty on their vessels, yet they will have no right to countervail any increase of the difference between the duties payable on the importation of any articles into our ports, in British or in American vessels, unless by a duty common to all foreign nations; the right reserved on this subject, being confined to the difference that now exists, will not reach such future increase.[1]

[1] How ridiculous, then, the argument, if the basis of it were otherwise true, that the treaty, by tying up the Government from future discrimination, has prostrated our navigation before Great Britain! Can a restraint which is only to operate the short term of two years after the termination of the present war, have the mighty effect of sacrificing our navigation?

From this analysis of the fourteenth and fifteenth articles we are the better enabled to perceive the truth of the following propositions:

1. As, for the purpose of encouraging or protecting the agriculture and manufactures of Great Britain, several of our productions, in common with similar productions of the other nations, are prohibited from being imported into the British ports in Europe, we are free, whenever our interest shall require it, also to exclude any of the productions of the British dominions from being imported into our ports, extending such exclusions, as they do, to the like manufactures and productions of foreign nations.

Should that part of the twelfth article, which has not been ratified, in its modification retain the stipulation relative to the importation of coffee, sugar, and the other productions of the West Indies, it would constitute an exception to this proposition. But as the West India productions are dissimilar to those of our own country, they would not fall within the reason of these prohibitions, and, therefore, the exception would be of no consequence

2. As, for the like reasons, some of our productions are subject, in common with the like productions of other nations, to high or prohibitory duties in the British ports in Europe, we are free, likewise, to impose similar duties on any of the productions or manufactures of the British dominions, extending such duties, as they do, to the like productions and manufactures of other foreign nations.

3. As the navigation act of Great Britain, in order to extend their own shipping, has heretofore con-

fined the importation of foreign productions into the British ports to British ships, and to the ships of the country producing the same; the fifteenth article [appears] to contain an important innovation on this celebrated act, inasmuch as [by the most obvious construction of the terms] it gives us a right to import from our own territories into the British ports in Europe every article and description of goods and merchandises which any nation in their own ships is allowed to import. In consequence whereof, while all other foreign nations are prohibited and restrained from importing in their own vessels into Great Britain any goods or merchandises, except those of their own particular growth, produce, or manufacture, we, by the treaty, have a right to carry from our ports to the British ports in Europe, not only goods and merchandises of our own growth, produce, or manufacture, but also such goods and merchandises, the growth, produce, or manufacture of any foreign nation, as a nation producing or manufacturing the same would import in their vessels into Great Britain.

4. Should it ever be politic to exclude all foreign vessels from importing or exporting any species of goods, wares, or merchandises, by confining their importation or exportation to our own vessels, we are perfectly free to do so; with the exception, relative to the West India productions, referred to under the first proposition. Thus, for example, we may prohibit the importation of all Asiatic goods, except in American bottoms.

That these articles of the treaty leave our naviga-

tion and commerce as free, and secure to us as extensive advantages as have before been procured by our commercial treaties with foreign nations, will be seen by the following comparison:

1. By the articles before us, the parties restrain themselves from imposing any other or higher duties on the vessels and cargoes of each other, than they impose on the vessels and cargoes of all other nations; and also from imposing a prohibition of the importation or exportation of any article to or from the territories of each other, which shall not extend to all other nations. By the third and fourth articles of our treaty with France, and by the second and third articles of our treaty with Prussia, it is stipulated, that the subjects and citizens of the respective parties shall pay, in the ports, havens, and places of each other, no other or greater duties or imposts, of whatsoever nature they may be, than those which the nations most favored shall be obliged to pay; and, moreover, that they shall enjoy all the rights, liberties, privileges, and exemptions in trade, navigation, and commerce, which the said nations do or shall enjoy. And by the second article of the former and the twenty-sixth article of the latter treaty, the parties agree mutually, not to grant any particular favor, in respect to navigation or commerce, which shall not immediately become common to the other party, who shall enjoy the same favor, if freely granted, or on allowing the same compensation, if the concession was conditional.

The stipulations in the three treaties are, on these points, equivalent.

The second and third articles of our treaty with Holland, and the third and fourth of our treaty with Sweden, likewise contain mutual stipulations, that the subjects and citizens of the several parties shall pay in the ports, havens, and places of their respective countries, no other or higher duties or imposts than those which the nations most favored shall pay; and that they shall enjoy all the rights, liberties, privileges, and exemptions in trade and navigation which the said nations shall enjoy.

2. The articles before us, after stipulating that there shall be, between our territories and the British dominions in Europe, a reciprocal and perfect liberty of commerce, declare that the same shall be subject always to the laws of the respective countries. The introductory articles of our treaties with France, Holland, and Sweden, after asserting the intentions of the parties to take equality and reciprocity as their basis, likewise leave each party at liberty to form such regulations respecting commerce and navigation as it shall find convenient to itself; and the second and third articles of our treaty with Prussia, after stipulating the rights of the parties, respecting the duties and imposts, and the freedom of their navigation and trade, likewise require their submission to the laws and usages established in the two countries.

3. The articles before us, in their provisions relative to navigation, stipulate, as has been already observed, in common with our other treaties, that the ships of the parties shall not be subject to higher or other duties than those paid by all other nations.

They go further, and agree to vary this rule, so far as shall be necessary to equalize the tonnage duty imposed by the parties on the ships of each other. Our treaty with France is the only one in which we discover a similar stipulation. France had a high alien tonnage duty on all foreign vessels transporting the merchandise of France from one port to another port in her dominions. We had a less alien tonnage duty on foreign ships employed in a similar trade. Though not equally extensive, the case is parallel to that which exists between us and Great Britain. We have a high alien tonnage duty on all foreign vessels entering our ports; Great Britain has a less alien tonnage duty on foreign vessels entering her ports. In our treaty with France we reserve a right to countervail the alien tonnage duty imposed by France; and in like manner, in our treaty with Great Britain, she reserves a right to countervail the alien tonnage duty imposed by us. The object, in both instances, has been to place the navigation of the parties on the footing of exact equality.

The preceding exposition of these articles, illustrated by the comparison of their provisions with the analogous articles of our other treaties, would be sufficient to vindicate them against the objections to which they have been exposed. It is, however, thought advisable to take notice of such of these objections as are likely to have any influence on the public opinion.—[This will be done in a subsequent number.]

CAMILLUS.

NO. XXVIII

1795.

An extraordinary construction of the last clause of the fourteenth article has been assumed by the writer of Cato; his mistake in this instance has been the foundation of many of the errors with which that performance abounds. The article stipulates that there shall be a perfect and reciprocal liberty of navigation and commerce between our territories and those of Great Britain in Europe, subject *always* to the laws and statutes of the two countries, respectively. This navigation and commerce, says Cato, must be subject to, and defined and regulated by, the laws and statutes of the two countries which existed at the time of making the treaty; all future laws, that either party might be disposed to make, relative to the same, being excluded.

The reason assigned in support of this interpretation is, that the article would be nugatory, did not the laws and statutes alluded to mean only those in existence at the making of the treaty, since future laws might impair or destroy what the article confers.

Nothing in the expressions themselves requires this interpretation.

The customary and established meaning of them in other treaties would lead to a rejection of it. The object of the clause is not the limitation of the legislative power of the parties, but the subjection of their mutual navigation and commerce to their respective laws. This end is most fully attained by understanding the parties to mean their future as well as their existing laws. Besides, the interpreta-

tion must be such as will not destroy the use and meaning of other parts of the treaty. If this construction is just, some of the most important stipulations of the fifteenth article would really become useless. For instance, if the laws, existing at the time of making the treaty are alone to prevail, the articles of commerce, admitted or excluded by those laws, must remain entitled to admission or liable to exclusion. Why then say in the fifteenth article "that no prohibition *shall be imposed* on the exportation or importation of any articles to or from the territories of the parties respectively, which shall not extend to all other nations?" If a prohibition, applying to all foreign nations, may be imposed (as the clause allows), this would be a new or subsequent law, varying the law existing at the time of making the treaty, and consequently defeating the construction in question.

The reason adduced by Cato to support his construction is equally defective with his interpretation itself. The fourteenth article is in general terms, and similar, as has been shown, to the introductory articles of other treaties; so far from the last clause thereof being capable of destroying the preceding stipulations, it is the peculiar province of the next article to ascertain the points which the parties mutually agree to except from their legislative power. In all cases not thus excepted, the navigation and commerce of the parties is subject to their existing or future laws.

It is not necessary to remark on the several objections which have proceeded from the opinion

that the treaty restrains us from imposing prohibitory duties and exclusions; they are but subdivisions of the error that has been just combated.

Another objection which has been stated by several writers, and much labored by Cato, is that, under the right reserved to the British Government to countervail an alien tonnage duty, by the imposition of an equivalent one on our vessels entering their ports, they would gain and we should lose.

Several methods are adopted to prove this opinion. The observation that we have a tonnage duty on our own vessels, and that Great Britain has none, is repeated by way of objection against this as well as against the proposed adjustment contained in the twelfth article. The same reply already given might be sufficient in this place.

But [is it true] that British ships entering their own ports in Europe are wholly free from a tonnage duty? The contrary is the fact; since it is understood that they pay a tonnage duty for the support of light-houses, and some other institutions, connected with their navigation, which [in all their ports [1]] exceeds the tonnage duty of six cents per ton, that we levy on the entry of our own vessels employed in foreign trade. But Great Britain (it is alleged) will not only impose, in virtue of this reserved right, fifty cents per ton on our vessels entering her ports, but in every port except that of London she will furthermore exact one shilling and ninepence sterling, or thirty-nine cents per ton, for light-money and Trinity-dues, more than is paid by

[1] Unless London be an exception.

her own vessels; this, added to the difference before stated, would have, it is said, a very discouraging effect upon our navigation. Our tonnage duty is a tax not divided and appropriated, like the light-money or Trinity-dues in Great Britain, to specific and particular objects, but when levied, goes into the treasury with the duty of impost, and stands appropriated to the various objects to which that duty is appropriated. Among those objects is the support of light-houses. It is not the object to which the tax is applied that gives a denomination; whether it goes to support the civil list, or to pay annuities, or to maintain light-houses, or to support hospitals, it is equally a tonnage duty. A tonnage duty, then, of a certain amount, is now paid by American vessels entering the ports of Great Britain. This duty is not uniform, being less in London than in the other ports, and, in some instances, less than the tonnage duty paid by British ships entering our ports. The object of this clause (8th of the 15th article) is to equalize the alien tonnage duties of the parties. Hence the reservation of a right to the British Government to impose on our vessels entering their ports in Europe, a tonnage duty equal to that which shall be payable by British vessels in our ports. It would be against the manifest views of the parties, as well as against the explicit terms of the articles, to impose a tonnage duty (whether for light-money, Trinity-dues, or any other purpose) which should exceed that which shall be payable by British vessels in our ports.

The right reserved is expressly to impose on our

vessels an equal, not a greater tonnage duty than we shall impose on their vessels. This objection, therefore, must be abandoned.

But again, it is urged that our navigation, should it weather Scylla, must perish on Charybdis; for we are gravely told by Cato that, under the right reserved to the British Government to impose such duty as may be sufficient to countervail, or, which is equivalent, to balance the difference of duty payable on the importation into our ports of Asiatic or European goods by American or by British vessels, our ships will be thrown out of the trade with the British European dominions; because, under this right, the British Government will impose a duty on our productions carried to their ports in our own ships equal to the whole duty payable on the goods and merchandises imported into our ports by British ships; and as the goods and merchandises which we receive from them exceed in value those that they receive from us by one third, and as the duty to be countervailed is at least ten per cent. ad valorem on the goods received from them, the consequence will be, that the countervailing duty must amount to fifteen per cent. on the value of all our productions carried in our own ships to the British ports in Europe, while the same will be free in British ships. A more extravagant construction,[1] or an argument more inaccurately formed, can scarcely be imagined.

The countervailing right is not applicable to the

[1] [If I mistake not, the assertion of Cato, as to the *whole duty*, has been retracted; but the residue of his error on this point remains unrecalled.]

whole duty payable on goods and merchandises imported into our ports in British ships, but expressly confined to the difference of duty now payable on the same when imported by American or by British vessels. This difference is one tenth part of the duty upon all European goods—that is to say, these goods pay one tenth part more duty when imported in British vessels than is paid on the same when imported in an American vessel. In all cases, therefore, where our impost is ten per cent. ad valorem, the difference of duty to be countervailed amounts to only one per cent. on the value of the goods, instead of ten per cent., as is alleged by Cato; in the instance of teas imported from Europe the difference is greater. Again, it is not an aggregate sum that is to be apportioned under this countervailing right, for this sum would be liable to constant variation, according to the quantity and species of goods imported into our ports from time to time by British vessels; and besides, the British Government possess no means whereby the amount thereof could be ascertained.

Cato feels and admits the force of these remarks as decisive against an average duty, without perceiving that they possess equal strength against his project of countervailing the whole duty paid on the importation of goods and merchandises into our ports by British vessels; for the same variation in the amount, and the same want of the means to ascertain it, will operate in both cases. The reasons which he himself employs to prove that an average duty cannot be ascertained, equally show the im-

practicability of the method which he considers as the one that will be employed in the execution of the countervailing right reserved to the British Government. It has before been stated that the natural, as well as the equitable, mode of executing this power will be to impose a duty on the goods imported by us from their European ports exactly the same as makes the difference of duty on the importation thereof into our ports by American or by British vessels.

Admitting that the execution of the countervailing right reserved to Great Britain will do no more than place the navigation of the parties on an equal footing in their mutual intercourse, still we are told that for this, likewise, the treaty is blamable, because even equality will be such an advantage to our rival, that we shall be unable to maintain the competition.

This objection brings with it a quality rarely to be discovered in the opinions of the cavillers against the treaty. Their usual error is a false and magnified estimate of the comparative resources, strength, and importance of our country; in this instance, shifting their ground, they fall into the opposite extreme, and contend for our inferiority in a branch of business in the prosecution of which we are unquestionably able to meet a fair competition with any nation.

With what propriety could we have proposed or expected an adjustment of our intercourse by which our vessels should have been placed on a better footing than those of the other party? As the trade was mutually beneficial, why could we, more than Great Britain, ask for an arrangement that should subject

our rival to comparatively heavier burdens? Does any considerate man believe, that it would have been proper for us to ask, or that there is the least probability that Great Britain would have acceded to, an arrangement on the subject of our mutual navigation, that should have secured to us advantages denied to them? To place the navigation of the parties on an equal footing, was all that could be rationally expected by either; and so far from such a settlement being injurious to us, the contrary has long been the opinion both here and in Great Britain. If it is true that we are unable to maintain a competition with the British navigation, how are we to account for the jealousy [that is understood] to have shown itself on their part on this subject.

But the fact is otherwise—British ships cannot be built and equipped as cheap as American ships, nor are they victualled and manned [1] on as good terms. Our country abounds with excellent materials for ship-building. Great Britain is in a great measure dependent upon other countries for a supply of them. The materials for the construction of ships are much cheaper in America than in Great Britain; and intelligent characters in Great Britain as well as in America have affirmed, that an American merchantship of any given burthen can be built and equipped for sea one third cheaper than a British, Dutch, or French ship of equal goodness. Mr. Coxe informs us, that the cost of an American ship, built of our

[1] [In the comparison in this particular, we must combine the *number* of hands with the terms of compensation according to which the vessels of the two countries are navigated.]

live oak and cedar, is from 36 to 38 dollars per ton, completely finished; while an oak ship in the cheapest part of England, France, or Holland, fitted in the same manner, will cost from 55 to 60 dollars per ton. The capital employed on the American merchantmen is therefore one third less on any given amount of tonnage than that employed in the same amount of British tonnage; or the money requisite to build and equip for sea two British merchant-ships, will be sufficient to build and equip for sea three American merchant-ships of the same burthen and of equal goodness. It is not only the difference in the first cost, but to this should be added the difference of interest and insurance, the annual amount whereof is ascertained by the value of the ships.

If we add to this the comparative advantages that we possess in victualling and manning our vessels, independent of the acknowledged and distinguished skill and enterprise of our seamen, it may be safely affirmed, that no American who knows the character of his countrymen, and who is not ignorant of our peculiar resources for ship-building, will doubt our superiority in an equal and fair competition with any other nation.

It is further alleged, that the treaty wants reciprocity, inasmuch as the whole territory of the United States is laid open to the British navigation and commerce, while in return, the British territories, *in Europe only*, are open to us. The short answer to this allegation is, that it is not true. All the British territories in Europe are laid open to us;

all their territories in Asia are also opened to us; the treaty likewise opened all their territories in the West Indies. The article relative to this branch of trade, as has already been observed, is excepted from the ratification of the treaty, and made the subject of future negotiation. The British territories on our continent, that of the Hudson's Bay Company excepted, are also opened to us in like manner as ours are opened to them. The intercourse is confined on both sides to the interior communications, the inhabitants of those colonies being equally destitute of a right to resort, by sea, with their ships to our ports and harbors, as we are of the right to resort, by sea, with our ships to their ports and harbors.

The territory of the Hudson's Bay Company, the island of Newfoundland, and the establishments on the coast of Africa, are the only British dominions to which the treaty, in its original form, does not give a right of intercourse and trade.

The settlement in the Bay of Honduras is on Spanish lands, and the right of precedence is conceded for specified objects, beyond which the Spanish Government are vigilant to restrain the settlers.

Spain may possibly be induced to allow us a right in common with Great Britain to cut mahogany and dye-woods in this region; but Great Britain cannot, consistently with her convention with Spain, share with us the privilege that she enjoys.

Newfoundland is a mere establishment for the British fisheries. The African trade has been, and might hereafter be, pursued, if our humanity and the force of public opinion did not impede it, without

procuring a right to resort to the British ports in that quarter; and in respect to the unsettled territory of the Hudson's Bay Company, about which so much has been noticed and written, it is of no sort of importance, except in a small Indian trade that employs two or three annual ships, which arrive there in August and escape in September; besides that, this trade belongs to a company who possess a right to the exclusive enjoyment of it even against their fellow-citizens. It is finally alleged that the treaty will bind up and restrain our Government from making more specific and beneficial treaties of commerce with other nations.

Those who urge this objection have generally placed great reliance on another objection, which asserts that the treaty with Great Britain violates the Constitution, because it amounts to a regulation of commerce, the power to regulate which is vested in Congress and not in the Executive. Yet these very characters, in the next breath, maintain that the treaty is bad, because it precludes our Executive government (for no other power can make treaties) from making more minute and beneficial commercial treaties with other nations. If these observations can be reconciled, it must be thus: the Constitution does not authorize the Executive, with the aid of the Senate, to make a commercial treaty with Great Britain, having vested in Congress the power to regulate the trade between us and that nation; but it allows the Executive to make commercial treaties with any other nation, which may establish the most material and minute commercial and revenue laws,

without affecting the power vested in Congress to regulate trade. That we may have characters among us sufficiently intemperate to wish that such was the Constitution, I am not prepared to deny; but that such a construction can be made out, yet remains to be proved.

The objection, as usual, is made in a loose and inaccurate manner; literally interpreted, we should infer that the treaty contained an article, whereby we had agreed with Great Britain that we would not form any future treaties of commerce with any nation; but no such stipulation exists.

Is it meant by the objection to be alleged that we can form no commercial treaty, whereby, for an advantage yielded on our part, we may acquire a privilege in return, unless we yield the same advantage to Great Britain gratuitously and without receiving from her the equivalent?

Admitting the truth of this objection, it might be replied: So, on the other hand, Great Britain can form no commercial treaty, whereby, for an advantage yielded on her part, she may acquire some privilege in return, unless she yields the same advantage to us gratuitously and without receiving from us the equivalent; and as Great Britain, whose commercial relations are equally extensive with ours, and whose capital far exceeds ours, is equally restrained on this point, our chance of gain would be fully equal to our chance of loss.

But the allegation is not generally true, and the objection, when examined, will be found to be of little weight, even with those who may imagine that

nations do sometimes make good bargains by the purchase of privileges and exemptions in their foreign trade. The case that has been chosen to enforce the objection, shall be employed to invalidate it.

Admit that the treaty with Great Britain is in operation; that the oil and provision merchants of the United States, and the wine and brandy merchants of France are desirous of a treaty between the two countries, whereby those commodities shall be received from each other on low duties or freely; admit further, that the governments of the two nations are disposed to make such a treaty (this is the case again put by the opposers of the treaty as impracticable), what will restrain the conclusion of this treaty? The disadvantage that will arise from our treaty with Great Britain? No; for Britain produces neither wines, nor brandy made from wines, with which she could supply us; she therefore could gain nothing, nor should we lose any thing, by the conclusion of such a treaty. All that will be requisite, therefore, in the formation of such treaties, will be to choose for the purpose such articles of the growth, manufacture, or produce of any country with whom we desire to treat, as are not common to it and the British dominions, and any skilful merchant will quickly make the selection. Hence it appears that the objection is not well founded in point of fact.

But though it may be practicable, will it be politic in us to conclude no commercial treaties of this character with any nation? If we resort to precedents

as guides, we shall discover few, the history of which would encourage us. Indeed, they are a description of conventions not often formed between nations.

They are of difficult adjustment, and necessarily increase the provisions of the commercial code, sufficiently intricate, when only one rule prevails in respect to all nations. Besides, however perfect may be the right of nations in this respect, yet, when the productions of one nation are received at lower duties than the like productions of another, the discrimination will scarcely fail to awaken desires and to produce dissatisfaction from their disappointment.

Again, unless we are prepared, at the expense of the whole, to procure advantages or privileges for a part of the community, we shall doubt the policy of such stipulations. Between two manufacturing nations, in each of which the manufactures have attained to great perfection, a tariff of duties may be established by treaties, in the payment of which the manufactures of the two countries might be freely exchanged and mutually confirmed; such was the commercial treaty between France and Great Britain in the year 1786. But the subject was so intricate and involved such a variety of apparently independent circumstances, such as the price of provisions, the amount and the manner of levying of the taxes, and the price of the raw materials employed in their respective manufactures, that neither party felt entire confidence in the equity and reciprocity of the treaty; and with all the skill in negotiation, that France in a superior degree has been supposed to have possessed, the opinion of that nation has finally

been, that the treaty was burdensome and disadvantageous to them.

We have another specimen of this species of treaty in a short convention between England and Portugal, concluded in 1703. The object was to procure a favorable market for dissimilar commodities, and such as were not the common production of the two countries. But this treaty, which has been so much applauded, is essentially defective in point of reciprocity. England agrees to admit the wine of Portugal on payment of two thirds of the duty that shall be payable on French wines; and in return, Portugal agrees not to prohibit the English woollens. She does not agree to receive them exclusively of the woollens of other countries, nor to admit them on payment of lower duties. The advantage, therefore, is manifestly on the side of Portugal. By the treaty of commerce between France and Great Britain, concluded in 1786, it was agreed, that the wines of France imported into Great Britain should pay no higher duties than those which the wines of Portugal then paid. The consequence must have been a reduction, without compensation or equivalent from Portugal, of the existing duties on the wines of that country brought into Great Britain, equal to one third of the amount of such duties. This is an instance of inconvenience and loss, resulting from the species of treaties, which it is alleged as an objection to the treaty concluded between us and Great Britain, that we are prevented by it from making with other nations.

A small compact nation, likewise, who excel in

some one species of manufacture that is established throughout their territory, and in the conducting and success whereof there is a common interest, may find it useful to procure the exclusive supply of some foreign market; provided, in this as in all other bargains, the compensation shall not be too high. But in a nation like ours, composed of different States, varying in climate, productions, manufactures, and commercial pursuits, it will be more difficult to enter into treaties of this kind. Should Great Britain, for example, be inclined to admit our fish-oils freely, or on payment of low duties, on condition that we would receive their woollens or hardware freely, or on payment of low duties, would the Middle and Southern States be satisfied with such a treaty?—would they agree to a tax on their estates sufficient to supply the deficiency in the revenue arising from the relinquishment of the impost on British woollens or hardware? Would it not be said that such a tax was a bounty out of the common treasury, on a particular branch of business pursued alone by a portion of the citizens of a single State in the Union? Instances might be multiplied in the illustration of this subject; but they will readily occur to every man who will pursue a little detail in his reflections. We have once made an experiment of this kind; its fate should serve as a caution to us in future. By the eleventh and twelfth articles of our treaty with France, it was agreed that France should never impose any duty on the molasses that we should import from the French West Indies; and in compensation of this exemption,

that we should never impose any duty on the exportation of any kind of merchandise by Frenchmen, from our territories, for the use of the French West Indies. These articles produced much dissatisfaction in Congress: it was said to be a benefit that would enure to the use and advantage of only a part, but which must be compensated by the whole. Those arguments which will show themselves in future, should similar conventions be formed, were displayed on this occasion. The treaty was ratified; Congress applied to the king of France to consent to annul these articles; this request was granted; and the articles were, by the several acts of the parties, annulled.

Not only the few instances of the existence of these treaties among the nations, added to the peculiar difficulties which we must meet in their formation, should lead us to doubt their utility, but also the opinion of our own country, which, if explicit on any point, has been repeatedly so in the condemnation of this species of national compact.

The introductory article of our commercial treaty with France asserts, that the parties willing to fix in an equitable and permanent manner the rules which ought to be followed relative to their correspondence and commerce "have judged that the said end could not be better obtained than by taking for the basis of their agreement the most perfect equality and reciprocity, and by carefully avoiding all those burdensome preferences which are usually sources of debate, embarrassment, and discontent."

The same language is employed in our subsequent

treaties with Holland and with Sweden; the public voice is unequivocal on this subject.

On the whole, the more closely this question is examined the more doubtful will the policy appear of our entering into treaties of this description. We shall have to encounter not only the intrinsic difficulties that always attend a fair and precise adjustment of the equivalents, together with the national discontents that proceed from errors on this point; but, moreover, a still greater embarrassment from the circumstance that our great staple exports are not the common productions of the whole Union, but different articles are peculiar to different parts thereof. If, notwithstanding, our Government shall discover an instance in which, consistent with the common interest and sound policy, such a treaty might be desirable, we have scope sufficient to form it without incurring loss or disadvantage by the operation of our treaty with Great Britain.

CAMILLUS.

NO. XXIX

1795.

The sixteenth article is entirely conformable to the usage and custom of nations. The exchange of consuls had already taken place between us and Great Britain; and their functions and privileges being left to the definition of the law of nations, we shall be exempt from those unpleasant controversies that too often arise from special conventions, which enlarge the consular privileges, power, and jurisdiction.

The agreement that either party may punish, dis-

miss, or send back a consul for illegal or improper conduct, is calculated to prevent national misunderstandings, and to secure a respectful deportment in the consular corps. I have not observed that this article has been disapproved of from any quarter.

The seventeenth article, which respects the capture and detention of the vessels of the parties on just suspicion of having on board enemy's property, or contraband of war, has been the object of intemperate censure—with how much justice it shall be the business of this paper to examine.

The principal complaint is, not that the article exposed our own property to loss by capture, for this is not the case, but that it does not protect enemy's property on board our vessels. The defence of the article will rest upon the proofs which shall be exhibited, that it is in conformity with, and supported by, the clear and acknowledged law of nations—that law which pronounces that enemy's goods on the high seas are liable to capture, and as a necessary means to this end, that neutral ships are there liable to examination or search.

The law of nature (as heretofore observed), applicable to individuals in their independent or unsocial state, is what, when applied to collections of individuals in society, constitutes the natural or necessary law of nations. An individual in a state of nature, for reparation of injuries, or in defence of his person and property, has a right to seize the property of his enemy, and to destroy his person.

Nations always succeed to the rights that the individuals who composed them enjoy in a state of

nature; and hence it is that by the law of nations, from the earliest annals of society, the goods or property of one enemy have been considered as liable to be seized and applied to the use of another. This right must be so used as not to injure the rights of others; subject to this limitation, it is perfect, and an interruption of it by another is an injury. As in a contest between two individuals in a state of nature, no third has a right, without becoming a party in the controversy, to protect the property or defend the person of either of the parties; so in a war between two nations, no third nation can act out of its own jurisdiction, consistent with the duties of neutrality; or, without becoming a party in the war, protect the property of, or defend, either of the parties. Though nations are, in respect to each other, like individuals in a state of nature, the resemblance is not in every particular perfect. Individuals in a state of nature have not only the inferior dominion or private ownership of property, but the entire and perfect dominion over it. In society the latter right belongs exclusively to the nation, while the former belongs to the several members that compose it. Immovable things, such as lands, which are denominated the territory of a nation, are the immediate and special objects of this perfect dominion or paramount property. Movable things are the proper objects of inferior dominion or private ownership, and are not otherwise the objects of the national or paramount property than as they happen to be within its territorial limits. The perfect dominion or jurisdiction of a nation, in respect to property,

extends over, and is bounded by, the lands thereof and the waters appurtenant to the same.

As soon, therefore, as movable things pass out of these limits, they cease to be under the dominion or jurisdiction of the nation, the private property of whose members they may be.

This private property, in movable things, may be enjoyed within the territory of a nation, by those who are not members thereof. Hence in a war between two nations, a member of one of which owns movables within the territory of a third or neutral nation, such movables or property are not liable to seizure by reason of the war; because, being within and under the exclusive jurisdiction of a third nation, it would be an injury to the right of such nation to go there and seize the same. So long as such movables remain within a foreign territory, they are objects of its dominion and protection; but as soon as they are carried out of the same, they cease to be any longer under its jurisdiction or protection.

In a war between two nations, all the members of each are enemies to the other, and all the property of the several members, as well as the strictly national property, is liable to seizure. In general the character of the owner, whether enemy or friend, decides whether property is liable to capture by reason of war; but the validity of the capture depends not only on the goods being enemy's property, but likewise on the fact that the place of capture is one in which the right may be exercised without injury to the rights of a neutral nation. Hence the property of an enemy is liable to capture only within

the respective territories or jurisdiction of the belligerent nations, or in a place not within the territory or jurisdiction of any nation. In either of these places the right may be exercised without injury to the rights of neutral nations. The limitation of this right, so far as respects enemy's property found within the territory of one of the parties on the breaking out of war, has before been discussed, and placed, I flatter myself, on solid principles.

The main ocean not being within the territory or subject to the exclusive dominion of any nation, is a place where enemy goods may lawfully be captured. An impediment by any third nation to the exercise of the right of capture on the ocean by either of the belligerent parties, would be an injury.

As the goods of an enemy, within the territory of a neutral state, are under the protection thereof, the law of nations, for the reasons that have been stated, will not permit us to take them; in like manner, we have no right to take them if they are on board a ship, whilst the ship is in a neutral port, whether the ship itself is a neutral one, or belongs to an enemy, because the port is a part of the territory. When the goods of an enemy are on board the ship of an enemy, and the ship is in the main ocean, there is no doubt of our right to capture both the goods and the ship, because they are then in a place which is not the territory of any nation. But when the goods of an enemy are on board a neutral ship, and the ship is in the main ocean, though we have a right to take the goods, we have no right to take the ship, or to detain her any longer than is necessary to obtain possession

of the goods; for the ocean itself is no territory, and neutral ships, as they are movable goods, can not be parts of the neutral territory, and consequently are no more under the protection of the neutral state than the same goods would be if they were passing through an unoccupied country in neutral carriages or on neutral horses.

A neutral ship (says Rutherforth in his *Institutes*, whose reasoning on this question I adopt) may indeed be called a *neutral place;* but when we call it so, the word *place* does not mean territory, it only means the thing in which the goods are contained. Though the goods of the enemy had been on board a ship belonging to the enemy, we might have said, in the same sense, that they were in a neutral place, if they had been locked up there in a neutral chest. But no one would imagine that such a neutral place, as a chest, can be considered as a part of the territory of the neutral state, or that it would protect the goods. Notwithstanding, a neutral chest is as much a neutral place as a neutral ship.

A ship, though a movable thing, is under the jurisdiction of a nation whilst it continues in one of its ports; but as soon as it is out at sea, only the private ownership, or inferior dominion, of the ship remains, and it ceases to be under the dominion or jurisdiction of the nation. The case will be the same if, instead of supposing the ship to be the property of a merchant, we suppose it to be the property of the nation.

For though we cannot well call the property which *the nation* has in such a ship by the name of private ownership, yet, when the ship comes into the main

ocean, the jurisdiction or paramount property ceases, and the right that remains is an inferior kind of property, which has the nature of private ownership. If the jurisdiction which a neutral state has over the ships of its members, or even over its own ships, ceases when the ships are out at sea, the goods of an enemy, that are on board such ships, cannot be under the protection of the nation in the same manner as if the ships had been in one of its ports, or as if the goods had been on its land.[1]

Notwithstanding a neutral nation, when its ship is in the main ocean, has no jurisdiction over the ship itself, as if it was a part of its territory, yet the nation, or some of its members, which is the same thing, will continue to have the inferior sort of property or ownership in it. This species of property will protect the ship from capture, though the enemy's goods on board her may lawfully be taken.

But here a difficulty occurs. This inferior kind of property, called private ownership, to distinguish it from the jurisdiction over things, is an exclusive right; those who have such ownership in things, whether private or public persons, have a right to exclude all others from making use of such things; and by this means, the rights of others are often hindered from taking effect.

Wild beasts, birds, and fishes are, till they are catched, in common to all mankind; and I, in com-

[1] [The jurisdiction here spoken of is relative to property, and altogether distinct from what is termed personal jurisdiction, which respects the relations between the society and its members. This latter species of jurisdiction is not confined to the territorial limits of a nation.]

mon with others, have a right to take them, and thereby to make them my own. But I cannot hunt, or shoot, or fish, without perhaps sometimes using the soil or water of another man; and as I have no right to use these without his consent, he may justly hinder me from doing any of these acts, as far as his right of property extends. Thus by private ownership I am prevented from taking such things as I should otherwise have a right to take, if they did not happen to be in such places as he had an exclusive right to. In like manner, though I have a right to take the goods of my enemy, when they are out at sea, yet may not the effect of this right be prevented by the inferior property or ownership which a neutral nation, or its members, have in the ship in which the goods are? If the law of nations is nothing but the law of nature applied to the collective persons of civil societies, instead of saying that the law of nations has decided otherwise, we should disclose a natural reason why it should determine otherwise. When I have merely a right to acquire property in a thing that is common to all mankind, but cannot do it without the use of what is already the property of some other man, this man neither does me an injury, nor encourages or protects others who have injured me, by excluding me from the use of what belongs to him. But when we have a right in war, upon account of the damage which the enemy has done us, to take goods of the enemy, and these are in a neutral ship, if the neutral state, though it has property in the ship, should make use of its right of property to protect the goods against us, this protection makes

it an accessory to the injury, which is the foundation of the claim upon the enemy to obtain reparation of damages, and consequently is inconsistent with the notion of neutrality.

But whilst this answer removes one difficulty, it brings another. If a neutral nation makes itself accessory to the damages done by the enemy, by protecting such enemy's goods as she has a right to take for reparation of damages, when these goods are out at sea in one of its ships, why might not the same nation, without becoming in like manner an accessory, protect the same goods when the ship is in one of its ports, or when the goods are on land within its territory? A law of nations, which is natural as to the matter of it, and positive only as to the objects of it, will furnish an answer to this question.

Every State has, by universal acknowledgment and consent, by the law of nations, an exclusive jurisdiction over its own territory. As long, therefore, as a State keeps within its own territory, and exercises its jurisdiction there, the protection in question is not a violation of our rights; but when its ships are in the main ocean, as they are then in a place out of its territory, where, by the law of nations, it has no jurisdiction, this law will allow us to take notice of the protection which it gives to the goods of an enemy, and to consider it as an accessory to the damages done by the enemy, if it gives them protection.

In respect to the right of examination or search, if the end is lawful, and the examination or search a necessary mean to attain this end, the inference is

inevitable, that the examination or search is likewise lawful.

If the question, whether enemy goods are seizable on board a neutral ship, were really doubtful, yet the right to search neutral ships must be admitted for another reason. All agree that arms, ammunition, and other contraband articles may not be carried to an enemy by a neutral power; without searching vessels at sea, such supply could not be prevented. The right to search, therefore, results, likewise, from the right to seize contraband goods. Again, the state of war authorizes the capture of enemy's ships and goods; but on the main ocean, which is the great highway where the ships and goods of all nations pass, how are the ships and goods of an enemy to be distinguished from those of a friend? No other way than by examination and search. Hence, then, the right of search is deducible from the general right to capture the ships and goods of an enemy.

It would undoubtedly disembarrass the commerce of neutral nations were passports and ships' papers received, in all cases, as conclusive evidence of the quality and property of the cargo. And did treaties, in fact, effectually secure an exemption from rude and detrimental inquisitions upon the ocean, they would become objects of inestimable worth to the neutral powers. But, notwithstanding the existence of stipulations in our other treaties [which aim at giving some force to similar credentials], can it be said that our ships have been visited with less ceremony by one party than by the other? And may not the experience of other nations, as well as that of

our own, be appealed to, in proof of the opinion, that these stipulations, however exact and positive, are too little regarded by that class of men, to restrain and govern whose conduct they are instituted?

The right of search ought to be used with moderation, and with as little inconvenience as possible to the rights of nations not engaged in the war. And the law of nations, on the other hand, requires the utmost good faith on the part of the neutral powers. They are bound not to conceal the property of the enemy, but, on the contrary, to disclose it when examination shall be made; in confidence of this impartiality, the law of nations obliges the powers at war to give credit to the certificates, bills of lading, and other instruments of ownership produced by the masters of neutral ships, unless any fraud appear in them, or *there be good reason for suspecting their validity.* The right of search is [always] at the peril of those who exercise it; the right, notwithstanding [must be acknowledged] to be indubitable.

The reasoning employed to prove that all neutral ships on the main ocean are liable to search, and enemy goods on board them to capture, is supported by the ablest writers on public law, and their decision is believed to be unanimously in its favor.

The Italian states were the first among modern nations who cultivated the interests of commerce, and before the passage of the Cape of Good Hope, Venice and Genoa distributed the manufactures of Asia throughout Europe. They, therefore, first defined the rights of navigation. Their maritime regulations are collected in a work called *Consolato del*

Mare; I do not possess the collection, but find the following quotation from it in Grotius.[1]

"If both the ship and freight belong to the enemy, then, without dispute, they become lawful prize to the captor; but if the ship belong to those that be at peace with us, and the cargo be the enemy's, they may be forced by the powers at war, to put into any of their ports, and unlade; but yet the master must be *satisfied for the freight of them.*"

Grotius, that learned and persecuted friend of liberty, whose life and great talents were dedicated to the service of mankind, and who displayed so much ability and learning in defending the freedom of the seas and of commerce, is clearly of opinion that enemy goods are not protected by neutral bottoms; he even goes further, and allows that *such property* occasions great presumption that the vessel is, likewise, enemy property.[2] Bynkershoek is of the same opinion.[3] Puffendorf and Heinecius[4] agree in this law; and Vatel, who is the latest writer, is explicit in his opinion. "Without searching neutral ships at sea," says he, "the commerce of contraband goods cannot be prevented—there is then a right of searching. Some powerful nations have, at different times, refused to submit to this. At present a neutral ship refusing to be searched would, from that proceeding alone, be condemned as lawful prize." "Effects belonging to an enemy, found on board a neutral ship, are seizable by the rights of war; but

[1] Grotius, Book III., chap. i., sec. 5, Note.
[2] Grotius, Book III., chap. i., sec. 8; Book III., chap. vi., sec. 6.
[3] Bynkershoek, *Quest. Jur. Pub.*, lib. i., cap. 13 and 14.
[4] Heinecius, *De Navibus*, cap. 2, sect. 114, 115, 116.

by the law of nature, the master is to be paid his freight, and not to suffer by the seizure. The effects of neutrals, found on board an enemy ship, are to be restored to the owners, against whom there is no right of confiscation."

Other authors of respectability might be quoted; but those already named will be acknowledged as the ablest, and their authority the most decisive of any that can be cited. So strong, clear, and uninterrupted, are the authorities of the writers on public law in relation to these points, that the advocates of an opposite rule may be challenged to produce a single authority of approved respectability in support of their opinion.[1]

CAMILLUS.

NO. XXX

1795.

Admitting that it was the law of nations that enemy's goods might be seized in neutral ships, it is alleged by Cato and other writers, who have appeared on the same side, that the treaties which have been formed between nations have annulled this law, and established another in its stead, equally extensive and binding on the whole civilized world.

In discussing this allegation, we should remember that all nations are in a state of equality, and independent of each other. No law, other than the necessary or natural law of nations, is binding on any nation without its consent, expressly or tacitly

[1] This subject will be resumed and pursued under different aspects in another number.

given. A law among nations cannot, like a civil or municipal law, be annulled, or enacted by a majority, or any portion short of the whole. By agreement between two or more nations, the operation of a law already in existence may be suspended so far as respects themselves; but such agreement works no change of such law, in relation to the rights or duties of other nations. The same is true of any rule of action established by convention between two nations; such rule is obligatory on the parties that form the contract, but is wholly without effect and nugatory in respect to all other nations. Unless, then, all nations have concurred in the design to annul this law, it must still exist; and treaties containing opposite stipulations can be considered in no other light than as exceptions to the same, in which certain nations have seen it their interest to agree.

Though one nation may have agreed with another to suspend the operation of this law, and to substitute the rule that free ships make free goods, and enemy ships enemy goods, there may have been some peculiar reason that induced the parties to form this convention with each other, that would not apply in respect to any other nation.

A nation may advance its interest perhaps by forming such a treaty with one nation, and injure it by forming it with another. Because a nation has, in some instances, or for a limited time, formed stipulations of this sort, it cannot from thence be inferred that it has thereby, in any sense, expressed its consent to a total repeal of a law, the operation of which it has agreed to suspend only for a limited time,

and in respect to a particular nation. Commercial treaties, in which we discover these stipulations, though not always, are commonly limited in their duration. This limitation is a strong argument against the doctrine which these treaties are cited to establish. For so many years, say the parties, we will suspend the operation of the law. When the treaty expires by its proper limitation, or is dissolved by war, the rule of the treaty ceases, and the law is again in force between the parties, and prescribes to them, in common with other nations, their rights and duties in this respect.

The law of nations, that authorizes the capture of enemy goods in neutral ships, requires the restoration of neutral goods captured in enemy ships; the treaties, which stipulate that free ships make free goods, stipulate also that enemy ships make enemy goods. I have discovered no instance of the former stipulation that has not been accompanied by the latter; though I have found instances of the latter stipulation unaccompanied by the former. This is the case in the treaty of peace, commerce, and alliance between Spain and England, concluded at Madrid, in 1667. Those, therefore, who contend that the law of nations has been repealed in one instance, must also insist that it has been repealed in the other. If the number of stipulations is to be received as evidence, the proof is stronger of a repeal in the latter than in the former case. But will any one seriously maintain, that a nation would have a right to confiscate the goods of a neutral power found on board an enemy ship, without an express

stipulation on the part of such neutral state consenting to the same? Would England or Spain, for example, have a right to confiscate American property captured in a French ship? Would America, if at war, have a right to confiscate the neutral property of Spain, Portugal, Denmark, or Russia, found on board an enemy ship? Has any nation ever confiscated property under this circumstance? If not, the inference is clear, that these stipulations are exclusively relative to the parties who form them, and that the rights of other states remain under the protection of the law of nations.

But, according to Cato, this reasoning may be just, yet inapplicable; for he maintains that *all nations* have consented to the establishment of this conventional law. "As far back as 150 years," says this writer, "and ever since, I find that the commercial nations have stipulated in their treaties, that free ships shall make free goods, that full credit shall be given to ships' papers, and that armed vessels shall not come within cannon shot of a neutral ship, but send their boats on board with only two or three men at most, to examine papers, but *not to search*, and that the treaties (by which is understood all the treaties) for 150 years back, relative to this object, are drawn in the words of the treaty between the United States and France."

Struck with the fulness of this assertion, I have carefully examined such collections of treaties as I have been able to procure, and going back to the year 1645, I have given a patient search to all the public conventions between Great Britain and

the several powers of Europe since that period. I find that, since that epoch, Great Britain has concluded commercial treaties with Spain, Portugal, France, Holland, Dantzic, Denmark, Sweden, and Russia.

In the treaties with Holland and with France, she has agreed to the stipulation, that free ships shall make free goods, and enemy ships enemy goods. In *Chalmers'* collection of treaties, a similar stipulation is contained in the 23d article of the treaty of alliance, concluded in 1564, between Oliver Cromwell and the king of Portugal; but in other collections in which that treaty is found, it does not contain a stipulation that free ships shall make free goods; and it has been denied, from a reputable quarter, on the part of Great Britain, that she has ever acceded to this principle, except in the instances of her treaties with Holland and France; neither of which exist any longer, the former having expired long since, and the latter being dissolved by the present war. Her treaties with Spain, Dantzic, Denmark, Sweden, and Russia, do neither of them contain this stipulation. On the contrary, the 12th article of the treaty with Sweden, and the 20th of the treaty with Denmark, each of which is now in force, and has been so for more than a century, as likewise the 14th article of the treaty with Dantzic, declares, that "lest the enemy's goods and merchandise should be concealed under the disguise of the goods of friends, it is stipulated, that all ships shall be furnished with passports and certificates, by which it shall be manifest to whom the articles, composing the cargoes, belong";

and the two first of these treaties, moreover, declare it "to be injurious to protect the property of enemies," and establish special guards to prevent the same.

In relation to the full credit to be given to ships' papers, and the manner of boarding neutral vessels, —in the treaties with Spain, France, and Holland, it is stipulated, that full faith shall be given to the passports, and that the boarding shall be by two or three men only. But the treaties with Portugal and Russia are destitute of any stipulation on this subject, except that in the latter it is agreed,[1] that "the searching of merchant ships shall be as favorable as the reason of the war can possibly admit, toward the most favored neutral nation, observing, as near as may be, the principles of the law of nations that are generally acknowledged." In the treaties with Dantzic,[2] Denmark, and Sweden, passports are required for the purpose of distinguishing, according to the solemnities of those treaties, the enemy property on board the ships of the parties; and it is stipulated, that credit shall be given to such passports, except in cases of just and urgent cause of suspicion, when, say these treaties, the ship ought to be searched. An exception, that fully recognizes the right to search, essentially does away with the security intended by the passports. But neither of these treaties contains any regulation relative to the manner of boarding neutral vessels.

This research, though made with care, may have been imperfect; the result thereof is, that there are

[1] Treaty of 1776, article 10.
[2] Treaty with Dantzic of 1706, article 20.

only two, possibly three, of these eight nations, with whom Great Britain has ever agreed to the stipulation, that free ships shall make free goods; only three of them with whom she has stipulated, that full credit shall be given to passports or ships' papers, or with whom the manner of boarding is settled. Instead, therefore, of that uniformity and universality in the stipulations in the commercial treaties, concluded within the last 150 years, so confidently asserted by Cato, we see that in five instances out of eight, of treaties concluded between Great Britain and the principal powers of Europe, within that term, they have on each of these points, given their sanction to a law directly in opposition to the assertion of this adventurous writer.

Yet, says Cato, "the principles of the armed neutrality, by the general consent of the great community of the civilized world, changed the law of nations." It is a singular logic that proves the agreement of nations by their disagreement, and their consent to a principle, by their drawing forth their fleet to dispute it. The armed neutrality, with those who understand its history, will not be relied on by way of proving a change in the law of nations, brought about by universal consent.

It will not be denied that this league, which was aimed principally against Great Britain, failed to accomplish its purpose, and that it expired with the American war. Nothing has been heard of it during the present war; and it is notorious, that Russia, and Holland before its conquest, were under agreements incompatible with the views of that association.

The northern powers of Europe under the countenance of France, united to support the principles of the armed neutrality; but the league did not include all the neutral powers; and of the powers engaged in the war, at that period, Spain consented to observe the principles contended for by the confederacy, on condition that Great Britain would agree to them, who, so far from agreeing, openly resisted them.

On the same principle, by which it is contended that this association introduced a new law of nations, might the armed leagues between certain nations to prohibit all commerce whatever with an enemy, be appealed to in proof of an alteration of the law of nations in this respect. England and Holland entered into such a league against France, in the year 1689; and other instances are mentioned by Grotius; yet no one has ever imagined that thereby any change was wrought in the law of nations.

The objection that has arisen from the dissimilarity between this article and those relative to the same subject in our other treaties, is equally defective with those already considered. The objection proceeds from an opinion that the law of nations has been changed, and that the stipulations in our other treaties are evidence thereof. The observations that have been offered on this subject are equally applicable to this objection, and it is therefore unnecessary to repeat them.

Not only reason, and the authority of jurists, but likewise the practice of nations, where they have been unrestrained by particular conventions, may be appealed to in support of this doctrine.

The practice of France, of Holland, even subsequent to particular stipulations, regulating this subject between themselves, has, in respect to other powers, been conformable to the law of nations. The ordinances and maritime decisions of France may be consulted to show what her practice has been, and that of Holland is evident by the convention of 1689, between her and England. The practice of Spain is understood to be the same; and in an instance that occurred during the American war, she carried the law to its utmost rigor, in assigning as a cause of condemnation of a neutral Tuscan ship, her forcible resistance of the right of search. Her capture of American ships, during the present war, on suspicion of their cargoes being enemy property, affords additional evidence of her practice and opinions on this subject. In respect to Great Britain, from the general notoriety of the fact, it seems, in some sort, unnecessary to add, that she has immemorially adhered, in her general practice, to the law of nations in its widest interpretation on this subject. In a few instances, and perhaps for special reasons, as was the case in respect to the treaty with Holland, concluded in 1667, she has entered into opposite stipulations; but at this time, unless it may be with Portugal, Great Britain has no such treaty with any nation.

So undisputed was the law on this subject, and so uniform the practice of nations in cases not governed by a conventional rule, that Congress in the commencement and through the greater part of our revolution war, authorized our ships of war and pri-

vateers to capture enemy property on board neutral ships, and our admiralty courts uniformly restored neutral property found on board enemy ships. This practice continued years after the conclusion of our treaty with France, which contains a stipulation, that free ships shall make free goods, and enemy ships enemy goods; no person, during that period, having supposed that thereby the law was altered in respect to other nations.

Towards the close of the war, to favor the views of the armed neutrality, in which league the United States were not a party, but whose opposition to Great Britain they naturally approved, Congress, in an ordinance on the subject of captures, ordained that neutral bottoms should protect enemy goods—but here they stopped. Thus far the authority was indubitable, because it was exercised only in abridgment of their own rights. Being engaged in war, they could not by their own act enlarge their rights, or abridge those of neutral ships; the extent of both being defined and settled by the public law of nations. They, therefore, never authorized the capture and condemnation of neutral goods found in enemy ships, nor could they have authorized the same, without a manifest violation of the rights of the neutral powers.

It is finally alleged that the article, if sound in its principles, is defective in those provisions which are requisite to protect and secure the neutral rights of the parties; inasmuch as it does not contain an explicit stipulation for the payment of freight on enemy goods, nor for the payment of damages for the detention or loss of neutral ships taken without just

cause. I do not recollect to have met with any precise stipulations on these points, in the commercial treaties between other nations. None such, if my recollection be right, are found in any of our other treaties; and I think it would be somewhat difficult to form such as would afford to the parties a more satisfactory security than that which arises from the law of nations—a neutral ship is entitled to freight for enemy goods captured on board her; but this right, if so admitted, may be forfeited by the irregular conduct of the neutral, by the possession of false or double papers, by the destruction of papers, or by those fraudulent concealments and evasions, which are inconsistent with fair and impartial neutrality. A ship taken and detained without just cause, is, together with her cargo, at the risk of the captors from the moment of capture; and in cases of partial or total loss, or of damages by detention, the owner is entitled to full and complete indemnification. But in case the neutral ship is under such equivocal and doubtful circumstances as afford probable cause to believe that either the ship, or cargo, is enemy property, a situation not to be reconciled with an open and fair neutrality, *in such case*, though on trial both ship and cargo should turn out to have been *bona-fide* neutral property, yet the captors may avail themselves of her equivocal situation and character, in mitigation, if not, under very peculiar circumstances, in total discharge, of damages. No stipulation, therefore, without these exceptions, would have afforded to the parties adequate security against such irregularities; and with them,

its want of precision would have left the subject as it now stands, to be regulated by the known and approved provisions of the law of nations.

These provisions being well understood, the article concludes with a stipulation against delays in the admiralty, and in the payment and recovery of the damages it shall decree.

This examination, I flatter myself, has fulfilled its object, which was to prove, that the article relinquishes no right that we possessed as a nation; that it is agreeable to, and supported by, the law of nations. A law in relation to this subject, coeval with the origin of maritime commerce, and the principles whereof have immemorially operated among nations.

It was desirable that a stipulation, similar to that contained in our other treaties, should have been obtained. But the time was unfavorable to the attainment of this object; and, as with great propriety has been observed by Mr. Jefferson, in behalf of our Government, "since it depends on the will of other nations as well as our own, we can only obtain it when they shall be ready to consent." By the 12th article, the parties agree to renew the negotiation on this point, within the compass of two years after the conclusion of the present war; when perhaps the restoration of peace, and other circumstances, may prove more propitious to our views. CAMILLUS.

NO. XXXI

1795.

I resume the subjects of the two last papers for the sake of a few supplementary observations.

The objections to the treaty, for not containing the principle, "that free ships make free goods," as being the relinquishment of an advantage which the modern law of nations gives to neutrals, have been fully examined, and, I flatter myself, completely refuted.

I shall, however, add one or two reflections by way of further illustration. A pre-established rule of the law of nations can only be changed by their *common consent*. This consent may either be express, by treaties, declarations, etc., adopting and promising the observance of a different rule, or it may be implied by a course of practice or usage. The consent, in either case, must embrace the great community of civilized nations. If to be inferred from treaties, it must be shown that they are uniform and universal. It can, at least, never be inferred, while the treaties of different nations follow different rules, or the treaties between the same nation and others vary from each other. So also as to usage. It must be uniform and universal, and, let it be added, it must be continued. A usage adopted by some nations, and resisted by others, or adopted by all temporarily and then discontinued, is insufficient to abolish an old, or substitute a new rule of the law of nations. It has been demonstrated that no consent of either description has been given to the rule, which is contended for in opposition to the treaty.

The armed neutrality, so much quoted, is entirely deficient in the requisite characters. Its name imports that it was an armed combination of particular powers. It grew up in the midst of a

war, and is understood to have been particularly levelled against one of the belligerent parties. It was resisted by that power. There were other powers which did not accede to it. It is a recent transaction, and has never acquired the confirmation of continued usage. What is more, it has been virtually abandoned by some of the parties to it—and among these, by the principal promoter of it, the politic and enterprising Catharine. It is, therefore, a perversion of all just ideas to ascribe to such a combination the effect of altering a rule of the law of nations.

In most important questions, it is remarkable that the opposers of the truth are as much at variance with each other as they are with the truth they oppose. This was strikingly exemplified when the present Constitution of the United States was under deliberation. The opposition to it was composed of the most incongruous materials—the same thing is observable in relation to the treaty. And one instance of the contrariety applies to the rule cited above.

While some of the adversaries of the treaty complain of the admission of a contrary principle by that instrument, as the abandonment of a rule of the present law of nations; others, conceding that there is no such rule yet established, censure that admission as a *check* to its *complete* and *formal establishment*, and as a retrograde step from this desirable point.

The objection in this form is more plausible than in the other, but it is not less destitute of substance.

If there has been any retrograde step, it was taken by the Government prior to the treaty. Authentic documents, which have been communicated by the Executive to Congress, contain the evidence of this fact.

Early in the year 1793, some British cruisers having stopped vessels of the United States, and taken out of them articles which were the property of French citizens, Mr. Genet, the then minister of France, in a letter of the 9th of July of that year, made a lively representation upon the subject to our Government, insisting, in a subsequent letter of the 25th of that month, in which he recurs to the same point, that the principles of neutrality established, that friendly vessels make friendly goods; and in effect, that the violation of this rule by Great Britain was a violation of our neutral rights, which we were bound to resent.

The reply of our Government is seen in a letter from our Secretary of State to that minister, of the 24th of July. It is in these terms: "I believe," says Mr. Jefferson, "it cannot be doubted, but that by the general law of nations the goods of a friend, found in the vessel of an enemy, are free, and the goods of an enemy, found in the vessel of a friend, are lawful prize. Upon this principle, I presume, the British armed vessels have taken the property of French citizens found in our vessels in the cases above mentioned; and, I confess, I should be at a loss on what principle to reclaim them. It is true that sundry nations, desirous of avoiding the inconveniences of having their vessels stopped at sea,

ransacked, carried into port, and detained under pretence of having enemy goods on board, have, in many instances, introduced, by their special treaties, another principle between them, that enemy bottoms shall make enemy goods, and friendly bottoms friendly goods; a principle much less embarrassing to commerce, and equal to all parties in point of gain and loss; but this is altogether the effect of particular treaty, controlling, in special cases, the general principles of the law of nations, and, therefore, taking effect between such nations only as have so agreed to control it."

Nothing can be a more explicit or unequivocal abandonment of the rule, that free ships make free goods, and *vice versa*, than is contained in this communication. But this is not all. In the letter from Mr. Jefferson to our minister in France, of the 26th of August, 1793, instructing him to urge the recall of Mr. Genet, the subject is resumed; the position asserted in answer to Mr. Genet insisted upon anew, and enforced by additional considerations. Among other suggestions, we find these: "We suppose it to have been long an established principle of the law of nations, that the goods of a friend are free in an enemy's vessel, and an enemy's goods lawful prize in the vessel of a friend. The inconvenience of this principle has induced several nations latterly to stipulate against it by treaty, and to substitute another in its stead, that free bottoms shall make free goods, and enemy bottoms enemy goods. We have introduced it into our treaties with France, Holland, and Russia; and French goods found by the two

last nations in American bottoms, are not made prize of. It is our wish to establish it with other nations; but this requires their consent also, is a work of time, and in the meanwhile they have a right to act on the general principle, without giving to us or to France, cause of complaint. Nor do I see that France can lose by it on the whole. For though she loses her goods when found in our vessels, by the nations with whom we have no treaties, yet she gains our goods when found in the vessels of the same and all other nations; and we believe the latter mass to be greater than the former."

Thus, then, stood the business antecedent to the treaty. Great Britain, adhering to the principle of the general and long established law of nations, captures French property in our vessels, and leaves free our property in French vessels. We acquiesce in this practice, without even a remonstrance or murmur. The French minister complains of it, as contrary to the principles of neutrality. We reply that, in our opinion, it is not contrary to those principles —that it is fully warranted by the general law of nations; that treaties, which establish a different rule, are merely exceptions to that law, binding only on the contracting parties; that having no treaty of the sort with Great Britain, we should be at a loss on what ground to dispute the legitimacy of her practice. We do not simply forbear to oppose; we do not offer to France as an excuse for our forbearance, that it is inconvenient to us, at the moment, to assert a questionable right at the hazard of war, but we tell her peremptorily that, in our opinion, no such

right exists, and that the conduct of Great Britain in the particular case is justified by the law of nations; neither do we wrap the motive of our forbearance in silence, nor content ourselves with revealing it confidentially to France alone, but we publish it without reserve to the world, and thus, in the presence of Great Britain, and every other nation, make a formal renunciation of the pretension, that "free ships shall make free goods, and enemy ships enemy goods"; no counter declaration is heard from either house of Congress.

It was impossible to give a more full sanction to the opposite principle than was given by this conduct, and these public and positive declarations of our Government. It was impossible more completely to abandon the favorite ground. It is puerile to attempt to discriminate between the force of this species of renunciation and that of an admission of its propriety by treaty. The conduct of a government avowed and explained, as to motives, by authentic public declarations, may assert or renounce a pretension as effectually as its compacts. Every nation, with whom we had no contrary stipulation, could say to us as well before as since the treaty with Great Britain: "Your Government has explicitly admitted that free ships do not make free goods, and you have no right to complain of our not observing that rule towards you." Candor, therefore, would oblige us to say that the treaty has left this point where it found it—that it has only not obtained from Great Britain a concession in favor of an innovation upon the law of nations, which it is desirable

to establish, but which cannot be claimed as matter of right. Though, therefore, it may not have the merit of strengthening, it has not the demerit of weakening, the ground.

The difference in our position, in this respect, before and since the treaty amounts to this, that before the treaty the Government had abandoned the ground through one organ, Mr. Jefferson; by the treaty, it continued the abandonment through another organ, Mr. Jay. If we consider the organ as the voluntary cause in each case (the presumption of which is equally fair in both cases), and if there be any blame, it falls more heavily on Mr. Jefferson than on Mr. Jay; for the former founded and made the retreat, and the latter only did not advance from the disadvantageous post to which he had retreated. In other words, Mr. Jay did only not recover the ground which Mr. Jefferson had lost. And we know that, in general, it is a far more difficult task to regain than to keep an advantageous position.

But, in truth, no blame can justly be imputed in either case. The law of nations was against the rule which it is desired to introduce. The United States could not have insisted upon it as matter of right; and in point of policy it would have been madness in them to go to war, to support an innovation upon the pre-established law. It was not honorable to claim a right, and suffer it to be infracted without resistance. It is not for young and weak nations to attempt to enforce novelties or pretensions of equivocal validity. It is still less proper for them to contend, at the hazard of their peace, against the clear

right of others. The object was truly not of moment enough to risk much upon it. To use the French proverb, "*The game was not worth the candle.*" In every view, therefore, it was wise to desert the pretension.

So, also, in the midst of a war, like that in which Great Britain was engaged, it were preposterous to have expected that she would have acceded to a new rule, which, under the circumstances of her great maritime superiority, would have operated so much more conveniently to her enemy than to herself. And it would have been no less absurd to have made her accession to that rule the *sine qua non* of an arrangement otherwise expedient. Here again *the game would not have been worth the candle.*

The importance of the rule has artfully been very much magnified, to depreciate proportionably the treaty, for not establishing it. It is to be remembered, that if something is gained by it, something is also given up. It depends on incalculable circumstances, whether, in a particular war, most will be lost or gained. Yet the rule is, upon the whole, a convenient one to neutral powers. But it cannot be pretended that it is of so great a value, as that the United States ought to adopt it as a maxim, never to make a treaty of commerce, in which it was not recognized. They might by this maxim forego the advantages of regulating their commercial intercourse in time of peace with several foreign powers, with whom they have extensive relations of trade, by fixed and useful conventional rules, and still remain subject in time of war to the inconveniences

of not having established, with those powers, the principle to which they make that sacrifice.

Though, therefore, it be a merit to a certain extent in a treaty to contain this principle, it is not a positive fault or blemish that it does not contain it. The want of it is not a good cause of objection to a treaty otherwise eligible.

Let me add, too, in the spirit of Mr. Jefferson's letter, that however it may be our wish to establish the rule with other nations besides those with whom we have already done it, this requires their consent also, of course their conviction, that it is their interest to consent; and that, considering the obstacles which lie in the way, the attainment of the object must be "*a work of time.*" It presupposes, in some of the principal maritime powers, a great change of ideas, which is not to be looked for very suddenly. It was not, therefore, to have been expected of our envoy, that he was to have accomplished the point at so premature and so unfavorable a juncture.

The assertion, that he has abandoned it, is made in too unqualified a manner. For while he admits the operation for the present, of the general rule of the law of nations, he has, by the 12th article, engaged Great Britain in a stipulation, that the parties will, at the expiration of two years after the existing war, *renew* their *discussion*, and *endeavor to agree* whether in any and what cases neutral vessels shall protect enemy's property. It is true, it will be in the option of Great Britain then to agree or not; but it is not less true that the principle is retained with consent

of Great Britain in a *negotiable* state. So far perhaps some ground has been retrieved.

I confess, however, that I entertain much doubt as to the probability of a speedy general establishment of the rule, that friendly ships shall make friendly goods, and enemy ships enemy goods. It is a rule against which, it is to be feared, the preponderant maritime power, to whatever nation this character may belong, will be apt to struggle with perseverance and effect, since it would tend to contract materially the means of that power to annoy and distress her enemies, whose inferiority on the sea would naturally cause their commerce, during war, to be carried on in neutral bottoms. This consideration will account for the resistance of Great Britain to the principle, and for the endeavors of some other powers to promote it; and it deserves notice, that her last treaty with France was severely assailed by some of the chiefs of opposition, for containing a stipulation in favor of that principle. The motive for consenting to it, in this instance, probably was, that the stipulation was likely to be rendered, in a great degree, nugatory by the relative situation of the two nations, which, in almost any war in which one of the two was engaged on one side, would probably render the other a party on the opposite side.

If these conjectures be right, there is a reflection which lessens much the value of stipulations in favor of the rule; that so long as one or more of the maritime powers disavow it, there will be a strong temptation to depart from a scrupulous observance

of such stipulations as we, in relation to France, have experienced in the present war.

In the course of the arguments against the 17th article, for virtually admitting the right of search in time of war, the objectors have had the temerity to cite the opinion of Vatel, as being opposed to that right; and a mutilated quotation has given an appearance of truth to the assertion. It has been heretofore shown, by passages extracted from his work, that his opinion, so far from denying explicitly, supports the right to search. But it may be useful to examine the part of it which has been tortured into a contrary inference.

After affirming the right of search (B. 3, chap. 7, 8, 14) he proceeds thus: "but to avoid inconveniences, violence, and every other irregularity, the manner of the search is settled in the treaties of navigation and commerce. According to the present *custom*, credit is to be given to certificates and bills of lading produced by the master of the ship." Hence it is alleged the right to search is turned into the right of inspecting the ship's papers, which, being entitled to credit, are to preclude further scrutiny.

But what immediately follows destroys this conclusion; the words "unless any ground appear in them, or there be very good reasons for suspecting their validity," are subjoined to the clause just quoted. This admits clearly, that the ship's papers are not to be conclusive, but that, upon just cause of suspicion, the papers may be disregarded, and the right of search may be exercised.

Who is to be the judge of the credit due to the

papers and of the just cause of suspicion? Manifestly the officer of the belligerent party who visits the neutral vessel. Then what does the whole amount to? Merely this—that ship's papers are entitled to a certain degree of respect and credit; how much, is left to the discretion of the officer of the belligerent party! who, if he be not satisfied of the fairness and validity of the papers, may proceed to their verification, by a more strict and particular search, and then if he still sees, or supposes he sees, just cause of suspicion, he may carry the vessel into a port of his own country, for judicial investigation. In doing this he acts at his peril, and for an abuse of his discretion, exposes himself to damages and other punishment.

This is the true and evident sense of Vatel, and it agrees with the doctrine advocated in these papers, and, I will add, with the treaty under examination.

The 17th article admits, that the vessels of each party, for *just cause* of suspicion of having on board enemy's property, or of carrying to the enemy contraband articles, may be captured or detained, and carried to the nearest and most convenient port of the belligerent party, to the end that enemy's property and contraband articles aboard may become lawful prize. But so far from countenancing any proceeding without *just cause* of suspicion, or from exonerating the officer of the belligerent party from a responsibility for such proceeding, it leaves the law of nations, in this particular, in full force; and contemplating that such officer shall be liable for damages, when he proceeds without *just cause* of

suspicion, provides that all proper measures shall be taken to prevent delay in deciding the cases of ships or cargoes brought in for adjudication, or in the *payment or recovery of any indemnification adjudged or agreed to be paid to the masters or owners of such ships*. Besides which, the 19th article stipulates, in order that more abundant care may be taken for the security of the respective subjects and citizens of the contracting parties, and to prevent their suffering injuries by the men-of-war and privateers of either party, that the commanders of ships of war and privateers shall forbear doing any damage to those of the other party, committing any outrage against them; and that if they act to the contrary, *they shall be punished*, and shall also be bound in their persons and estates *to make satisfaction and reparation for all damages, and the interest thereof, of whatever nature the said damages may be*. And further, after establishing that the commanders of privateers shall, before they are commissioned, give security to satisfy all damages and injuries, it adds, that in all cases of aggressions their commissions shall be revoked and annulled.

These provisions not only conform to, and corroborate the injunctions of the laws of nations, but they refute the assertion, that the treaty is altogether deficient in precautions for guarding neutral rights; since those above-mentioned are among the most efficacious. It is not presumable that any stipulations have been or can be made which will take away all discretion from the marine officers of the belligerent parties; for this would be a total surrender

of the rights of belligerent to neutral nations, and so long as any discretion is left, its right or wrong exercise will depend on the personal character of each officer; and abuses can only be restrained by the penalties that await them. Those stipulations of treaties, then, which reinforce the laws of nations as to the infliction of penalties, are the most effectual of the precautions which treaties can adopt for the security of neutral rights; and in this particular the treaty with Great Britain is to the full as provident as our other treaties. In one point I believe it is more so; for it expressly stipulates a revocation of the commissions of the commanders of privateers for the aggressions they may commit.

Is not the passage last cited from Vatel a true commentary on those stipulations, for regulating and mitigating the right of search, which are found in our own and other treaties? Do they not all intend to reserve to the belligerent party a right of judging of the validity and fidelity of the papers to be exhibited, and of extending the search or not, according to the circumstances of just suspicion which do or do not appear? and if this be their true construction, as it certainly is their construction in practice, which our own experience testifies, to what, after all, do they amount, more than without them the laws of nations, as universally recognized, of themselves pronounce? What real security do they afford more than the treaty with Great Britain affords?

It is much to be suspected, that there will always be found advantages essentially nominal, operating or not according to the strength or weakness of the

neutral party; which, if strong, will find abundant foundation in the acknowledged laws of nations on which to rest the protection of its rights.

It has been said to be just matter of surprise, that these precautions should have no place in a treaty with Great Britain, whose conduct on the seas so particularly suggested and enforced every guard to our rights that could be reasonably insisted on. Observations of this kind assume constantly the supposition that we had it in our power to fashion every provision of the treaty exactly to our own taste, and that the ideas of the other contracting party were to have no influence even upon the minor features of the contract. But this supposition is absurd; and a treaty may still be entitled to our approbation, which adjusts acceptably the great points of interest, though in some of its details it falls short of our desires. Nor can any well-informed man sincerely deny that it was to have been expected, that an adjustment of the particulars in question would fall short of our ideas. It may be answered, that we were then at liberty not to make the treaty; so we were, but does it follow that it would have been wise to split on such points?—upon a just estimate, their intrinsic value is very moderate.

CAMILLUS.

NO. XXXII

1795.

The eighteenth article of the treaty, which regulates the subject of contraband, has been grievously misrepresented; the objections used against it with

most acrimony, are disingenuous and unfounded! Yet while I make this assertion, which, I flatter myself, I shall be able to prove, I shall not pretend to maintain that it is an article completely satisfactory. I even admit that it has one unpleasant ingredient in it, and I am convinced that our envoy must have consented to it with reluctance.

But while candor demands this concession, it equally admonishes us, that, under the circumstances of the moment, the points in this respect to be adjusted were peculiarly unmanageable; that the position of the other party rendered an arrangement entirely agreeable to us, impracticable; that without compromise nothing could have been regulated; that the article made no change for the worse in our prior situation, but in some particulars made our ground better; and that estimating truly the relative circumstances of the parties, there is no probability that any thing more acceptable could have been established.

I will add, that a degree of imperfection, which may fairly be attributed to this article, is far from being of such importance as, on solid calculations, ought to defeat the treaty. No clear right is abandoned, no material interest of the nation injured.

It is one thing, whether every part of the treaty be satisfactory; another, and a very different thing, whether in the aggregate it be eligible or not, and ought to be accepted or rejected. Nations could never make contracts with one another if each were to require that every part of it should be adjusted by its own standard of right and expediency. The true

question always is upon the collective merits of the instrument; whether, upon the whole, it reasonably accommodates the opinions and interests of the parties. Tried by this test, the treaty negotiated with Great Britain fully justifies the acceptance of it by the constituted authorities of our country, and claims the acquiescence of every good citizen.

The most labored, and, at the same time, the most false of the charges against the eighteenth article is, that it allows provisions to be contraband in cases not heretofore warranted by the laws of nations, and refers to the belligerent party the decision of what those cases are. This is the general form of the charge. The draft of a petition to the Legislature of Virginia, reduces it to this shape. The treaty "*expressly* admits that provisions are to be held contraband in cases other than when bound to an invested place, and *impliedly* admits that such cases exist at present."

The first is a palpable untruth, which may be detected by a bare perusal of the article. The last is an untrue inference, impregnated with the malignant insinuation that there was a design to sanction the unwarrantable pretension of a right to inflict famine on a whole nation.

Before we proceed to an analysis of the article, let us review the prior situation of the parties. Great Britain, it is known, had taken and acted upon the ground that she had a right to stop and detain, on payment for them, provisions belonging to neutrals, going to the dominions of France. For this violent and impolitic measure, which the final opinion of

mankind will certainly condemn, she found color in the sayings of some writers of reputation on public laws.

A passage of this kind, from Vatel, has been more than once quoted, in these terms: "Commodities, particularly used in war, and the importation of which, to an enemy, is prohibited, are called *contraband* goods. Such are military and naval stores, timber, horses, and *even provisions in certain junctures, when there are hopes of reducing the enemy by famine.*" Heinecius [1] countenances the same opinion, and even Grotius seems to lean towards it.[2]

The United States, with reason, disputed this construction of the law of nations; restraining the general propositions which appear to favor it, to those cases in which the chance of reducing by famine was *manifest* and *palpable*, such as the cases of particular places, *bona fide* besieged, blockaded, or invested. The Government accordingly remonstrated against the proceeding of Great Britain, and made every effort against it which prudence, in the then posture of affairs would permit. The order for seizing provisions was, after a time, revoked.

In this state our envoy found the business. Pending the very war in which Great Britain had exercised the pretension, with the same administration which had done it, was it to have been expected that she would, in a treaty with us, even virtually or impliedly have acknowledged the injustice or

[1] *Law of Nature and Nations*, Book II., chap. ix., sec. 201. *Navibus ob vect.*

[2] Book III., chaps. i. and v., 3; chaps. i. and x.

impropriety of the conduct? Here was no escape, as in the instance of the order of the 6th of November, 1793, in the misconceptions of her officers. The question was to condemn a deliberate and unambiguous act of the Administration itself. The pride, the reputation, and the interest of that Administration forbade it.

On our side, to admit the pretensions of Great Britain was still more impossible. We had every inducement of character, right, and interest against it. What was the natural and only issue out of this embarrassment? Plainly, to leave the point unsettled; to get rid of it; to let it remain substantially where it was before the treaty. This, I have good ground to believe, was the real understanding of the two negotiators; and the article has fulfilled that view.

After enumerating specifically what articles shall be deemed contraband, it proceeds thus, "And whereas the difficulty of *agreeing* on the *precise cases*, in which alone *provisions* and *other articles*, not generally contraband, may be regarded as such, renders it expedient to provide against the inconveniences and misunderstandings which might thence arise: It is further agreed, that whenever any such articles, so becoming contraband *according to the laws of nations*, shall, for that reason, be seized, the same shall *not be confiscated*, but the owners thereof shall be *speedily* and *completely indemnified;* and the captors, or, in their default, the government under whose authority they act, shall pay to the masters or owners of such vessels, the full value of all articles with a reasonable mercantile profit thereon, together with

the freight and also the demurrage, incident to such detention."

The difficulty of agreeing on the precise cases in which articles, not generally contraband, become so, from particular circumstances, is expressly assigned as the motive to the stipulation which follows. This excludes the supposition that any cases whatever were intended to be admitted or agreed. But this difficulty rendered it expedient to provide against the inconveniences and misunderstandings which might thence arise; a provision, with this view is, therefore, made, which is that of liberal compensation for the articles taken. The evident intent of this provision is, that in *doubtful* cases, the inconveniences to the neutral party being obviated or lessened by compensation, there may be the less cause or temptation to controversy and rupture, the affair may be more susceptible of negotiation and accommodation. More than this cannot be pretended; because it is further agreed, "that whenever any such articles so become contraband, *according to the existing laws of nations*, shall, for that reason, be seized, the same shall not be confiscated, but the owners thereof shall be speedily and completely indemnified," etc., etc.

Thus the *criterion* of the cases, in which articles, not generally contraband, may, from particular circumstances, become so, is expressly the *existing law of nations;* in other words, the law of nations at the time the transaction happens. When these laws pronounce them contraband, they may, for that reason, be seized; when otherwise, they may not be seized. Each party is as free as the other to decide

whether the laws of nations do, in the given case, pronounce them contraband or not, and neither is obliged to be governed by the opinion of the other. If one party, on a false pretext of being authorized by the laws of nations, makes a seizure, the other is at full liberty to contest it, to appeal to those laws, and, if it thinks fit, to oppose, even to reprisals and war. This is the express tenor of the provision—there is nothing to the contrary; nothing that narrows the ground; nothing that warrants either party in making a seizure, which the law of nations, independent of the treaty, permits; nothing which obliges either party to submit to one, when it is of opinion the law of nations has been violated by it.

But as liberal compensation is to be made in every case of seizure, whereof difference of opinion happens, it will become a question of prudence and expediency, whether to be satisfied with the compensation, or to seek further redress. The provision will, in doubtful cases, render an accommodation of opinion the more easy, and, as a circumstance conducing to the preservation of peace, is a valuable ingredient in the treaty. A very different phraseology was to have been expected, if the intention had been, to leave each party at liberty to seize, agreeably to its own opinion of the law of nations, upon the condition of making compensation. The stipulation would thus have been: "It is agreed, that whenever either of the contracting parties shall seize any such articles so *becoming* contraband, and which shall, for that reason, be seized"; this makes, not the opinion of either party, but the fact of the articles having

become contraband by the laws of nations, the condition of the seizure.

A cavil has arisen on the term "*existing*," as if it had the effect of enabling one of the parties to make a law of nations for the occasion. But this is a mere cavil.

No one nation can make a law of nations; no positive regulation of one state, or of a partial nomination of states, can pretend to this character. A law of nations is a law which nature, agreement, or usage, has established between nations; as this may vary from one period to another by agreement or usage, the article very properly uses the term "existing," to denote that law which, at the time the transaction may happen, shall be then the law of nations. This is a plain and obvious use of the term, which nothing but a spirit of misrepresentation could have perverted to a different meaning.

The argument against the foregoing construction is in substance this (viz.): it is now a settled doctrine of the law of nations that provisions and other articles, not generally contraband, can only become so when going to a place besieged, blockaded, or invested; cases of this kind are fully provided for in a subsequent part of the article; the implication, therefore, is that something more was intended to be embraced in the antecedent part.

Let us first examine the fact, whether all the cases of that kind are comprehended in the subsequent part of the article. I say they are not. The remaining clause of the article divides itself into two parts. The first describes the case of a vessel sailing for a

port or place belonging to an enemy, without knowing that the same is either besieged, blockaded, or invested; and provides that, in such case, the vessel may be turned away, but not detained, nor her cargo, if not contraband, confiscated, unless after notice she shall again attempt to enter. The second describes the case of a vessel, or goods, which had entered into such port or place before it was besieged, blockaded, or invested, and declares that the one or the other shall not be liable to confiscation, but shall be restored to the owners thereof. These are the only cases described or provided for. A third, which occurs on the slightest reflection, is not mentioned: the case of a vessel going to a port or place which is besieged, blockaded, or invested, with notice of its being in that state when she commences her voyage, or previous to her receiving notice from the besieging, blockading, or investing party. This is left to the operation of the general law of nations, except so far as it may be affected in respect to compensation by the antecedent clause. Thus the fact, which is the foundation of the argument, fails, and with it, of course, the argument itself.

But had this been otherwise, the conclusion would still have been erroneous; the two clauses are entirely independent of each other, and though they might both contemplate the same cases in whole, or in part, they do it with an eye to very different purposes.

The object of the first is to lessen the danger of misunderstanding, by establishing this general rule, that whenever articles, not commonly contraband,

become so from particular circumstances, according to the law of nations, they shall still not be confiscated, but, when seized, the owners of them shall be indemnified.

The object of the last is to regulate some special consequences with regard to vessels and goods going to, or which had previously gone to places besieged, blockaded, or invested; and in respect to which the dispositions of the laws of nations may have been deemed doubtful or too rigorous. Thus it is held that the laws of nations permit the confiscation of ships and goods going to places besieged, blockaded, or invested; but this clause decides that if going without notice, so far from being confiscated, they shall not even be detained, but shall be permitted to go whithersoever they please. If they persist after notice, then the contumacy shall be punished with confiscation. In both instances the consequence is entirely different from every thing in the antecedent clause.

There, there is seizure, with compensation. Here, in one instance, seizure is forbidden, and permission to go elsewhere is enjoined. In the other instances, the offending things are confiscated, which excludes the idea of compensation. Again, the last part of the last clause stipulates, in the case which it supposes, the restoration of the property to its owners, and so excludes both seizure and compensation. Hence it is apparent the objects of the two clauses are entirely foreign to each other, and that no argument nor inference whatever can be drawn from the one to the other.

If it be asked, what other cases there can be, except those of places besieged, blockaded, or invested? and if none other, what difficulty in defining them? why leave the point so vague and indeterminate? One answer, which indeed has already been given in substance, is, that the situation of one of the parties prevented an agreement at the time; that not being able to agree, they could not define; and the alternative was to avoid definition. The want of definition only argues want of agreement. It is strange logic to assert, that this or that is admitted, because nothing is defined.

Another answer is, that even if the parties had been agreed that there were no other cases than those of besieged, blockaded, or invested places, still there would have remained much room for dispute about the precise cases, owing to the impracticability of defining what is a besieged, blockaded, or invested place. About this there has been frequent controversy; and the fact is so complicated, puts on such a variety of shapes, that no definition can well be devised, which will suit all. Thence nations, in their compacts with each other, frequently do not attempt one; and where the attempt has been made, it has left almost as much room for dispute about the definition as there was about the thing.

Moreover, is it impossible to conceive other cases than those mentioned above, in which provisions and other articles not generally contraband might, on rational grounds, be deemed so? What if they were going expressly, and with notice, to a besieging army, whereby it might obtain a supply essential to the

success of its operations? Is there no doubt that it would be justifiable in such case to seize them? Can the liberty of trade be said to apply to any instance of direct and immediate aid to a military expedition? It would be at least a singular effect of the rule, if provisions could be carried without interruption for the supply of a Spanish army besieging Gibraltar, when, if destined for the supply of the garrison in that place, they might, of right, be seized by a Spanish fleet.

The calumniators of the article have not had the candor to notice that it is not confined to provisions, but speaks of provisions and other articles. Even this is an ingredient which combats the supposition that countenance was intended to be given to the pretension of Great Britain with regard to provisions which, depending on a reason peculiar to itself, cannot be deemed to be supported by a clause including other articles, to which that reason is entirely inapplicable.

There is one more observation which has been made against this part of the article which may deserve a moment's attention. It is this, that though the true meaning of the clause be such as I contend for, still the existence of it affords to Great Britain a pretext for abuse which she may improve to our disadvantage. I answer, it is difficult to guard against all the perversions of a contract which ill faith may suggest. But we have the same security against abuses of this sort, which we have against those of other kinds, namely, the right of judging for ourselves, and the power of causing our rights to be

respected. We have this plain and decisive reply to make, to any uncandid construction which Great Britain may, at any time, endeavor to raise: "The article pointedly and explicitly makes the existing law of nations the standard of the cases in which you may rightfully seize provisions and other articles not generally contraband. This law does not authorize the seizure in the instance in question; you have consequently no warrant under the treaty for what you do."

The same disingenuous spirit which tinctures all the conduct of the adversaries of the treaty, has been hardy enough to impute to it the last order of Great Britain, to seize provisions going to the dominions of France.

Strange, that an order issued before the treaty had ever been considered in this country, and embracing the other neutral powers besides the United States, should be represented as the fruit of that instrument![1] The appearances are, that a motive no less imperious than that of impending scarcity has great share in dictating the measure, and time, I am persuaded, will prove that it will not ever be pretended to justify it by any thing in the treaty.

CAMILLUS.

NO. XXXIII

1796.

The course thus far pursued in the discussion of the 18th article has inverted the order of it, as it stands

[1] As reasonable would it be to place to its account the similar order which was issued before the mission of an envoy was thought of.

in the treaty. It is composed of three clauses, the two last of which have been first examined; I thought it advisable, in the outset, to dispose of an objection which has been the principal source of clamor.

The first clause of that which remains to be examined enumerates the articles which, it is agreed, shall be deemed contraband of war. These are, "all arms, and implements serving for the purpose of war, such as cannon, muskets, mortars, petards, bombs, grenadoes, carcases, saucisses, carriages for cannon, musket-rests, bandoliers, gunpowder, match, saltpetre, balls, pikes, swords, head-pieces, cuirasses, halberts, lances, javelins, horse-furniture, holsters, belts, and generally all other implements of war; as also timber for ship-building, tar or rosin, copper in sheets, sails, hemp, and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir planks only excepted."

All which articles are declared to be just objects of confiscation, when attempted to be carried to any enemy of either party.

It is well understood, that war abridges the liberty of trade of neutral nations; and that it is not lawful for them to supply either of two belligerent parties with any article deemed contraband of war; nor may they supply any article whatever to a place besieged, blockaded, or invested. The former case includes a special catalogue of articles which have an immediate reference to war; the latter extends to all kinds of goods and merchandise. The penalty in both cases is confiscation.

These positions have not been disputed. The

only question which has been or can be raised, must respect the enumeration of the articles which are to be considered as contraband.

In comparing the enumeration in the present treaty, with that of our former treaties, we find the differences to be these. Our former treaties include "*horses*," and one of them "soldiers," which our present does not; but our present includes "timber for ship-building, tar or rosin, copper in sheets, sails, hemp, and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir planks only excepted," which are not to be found in our former treaties.

It is alleged that the including of these articles is an extension of the list of contraband beyond the limit of the *modern* law of nations; in support of which allegation, it is affirmed, that they have been excluded by the uniform tenor of the treaties which have been formed for more than a century past.

Though this position will not, upon careful examination, appear correct; yet it is so far founded, as to claim an acknowledgment, that the article under consideration has, in this instance, pursued the *rigor* of the law of nations. It was to this I alluded, when I observed that it contained one unpleasant ingredient.

It is a fact, that far the greater proportion of modern treaties exclude naval stores or articles for ship-building; yet this is not universally the case.

By the third article of the treaty of alliance and commerce between Great Britain and Denmark, in 1670, the parties agree, "not to furnish the enemies

of each other with any provisions of war, as soldiers, arms, engines, guns, ships, or other necessaries for the use of war, nor to suffer the same to be furnished by their subjects." An explanation of this article was made by a convention, dated the 4th of July, 1780, which after enumerating as contraband the usual catalogue of military implements, adds, in the precise terms of our article, "as also timber for ship-building, tar, rosin, copper in sheets, sails, hemp, and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir planks only excepted."

In a series of treaties between Great Britain and Portugal, down to the year 1703, I do not discover that there has ever been a regulation of the articles which are to be treated as contraband, between these powers.

And between Sweden and Great Britain, the 11th article of a treaty, entered into in 1661 (and still in force unaltered, though a subsequent commercial treaty was made between those powers as late as 1776), subjects to confiscation equally all articles called *contraband*, and *especially money*, *provisions*, etc. This specification not being complete, naval stores are left upon the open ground of the law of nations; but money and provisions are superadded. This latitude would bear little doubt as to the intention to include naval stores.[1]

[1] An opinion has been propagated that Sweden armed in concert with Denmark, in order to maintain the neutral right of carrying corn and flour to France, in opposition to the convention of March, 1793, between Great Britain and Russia; and that in consequence of this

It appears from these specimens, that there is not a perfect uniformity in the conventions between nations; and that no purely positive law of nations can be deduced from that source.

If we call to our aid the principles of reason and natural justice, which are the great foundations of the law of nations, we shall not discover, in this instance, *data* as certain as could be wished, for a satisfactory conclusion; and the soundest determination which we can adopt will be, that beyond a certain point, the question is in a great degree arbitrary, and must depend materially upon conventional regulation between nation and nation. Hence

proceeding, the remonstrances of these powers have proved more successful than we have been in obtaining satisfaction from Great Britain.

This opinion is, throughout, an error, made use of by those whose persevering aim has been, by silencing truth, reason, and moderation, and inflaming the angry passions of the community, to *involve* the country in anarchy and war. The authors of this imposture, as well as the exalted patriots who have seen in the memorial of our envoy the humiliation of our country, are referred to a "collection of state papers relative to the war against France," published by Debret, in 1794. The perusal of the Swedish state papers, as well as the memorials of the able and prudent Bernstorff, may teach these gentlemen a little of what is deemed good manners on these occasions.

So far from even remonstrating, much less arming on account of the British instruction of June, 1793, when that order was notified at Stockholm, by the British Resident there, the Government of Sweden, by their Resident at London, acknowledged, in terms too respectful to be repeated in the hearing of our exclusive patriots, that Sweden was perfectly satisfied with the instruction; since, instead of payment, which the order insured, all provisions, in virtue of an existing treaty between the two nations, were liable to confiscation when seized, on their way to an enemy.

This note is added for the purpose of refuting a popular error, and not to vindicate the instruction alluded to, which I consider as an injury to the rights of neutral nations, that has not been justified by the answers that have been given by Great Britain to the American and Danish memorials.

it is there is so great a diversity in the stipulations of different parties on this point, indicating that there is no absolute rule. Hence also it is, that several nations at different times, being at war, have thought themselves authorized to regulate and announce, by public declarations, the articles which they would consider and treat as contraband.

The opinion of writers will be found to support the article as it stands, in the particular, which is now the subject of discussion.

Vatel, we have before seen (B. B. C. 3, 6, 7, S. 112), expressly ranks *naval stores* and *timber* under the denomination of contraband goods.

Heinecius (*De Navibus*, etc., chap. I., S. 10, 11, and 14) accords in the same position to the extent of whatsoever appertains to the equipment of vessels.[1]

Bynkershoek is less explicit. After laying it down as the general rule that naval stores, or the materials of ships, are not contraband, he proceeds thus: "Yet it sometimes happens that the materials of ships may be prohibited, *if an enemy is in great want of them, and without them cannot conveniently carry on the war*"[2]; and he afterwards cites, with approbation, several edicts or proclamations which the states-general, in different wars with different nations, have published, declaring those articles contraband—thus referring it to the belligerent party to judge of and pronounce the cases when they may

[1] Vela, Restes et si quæ alia ad apparatum nauticum pertinent.

[2] Quandoque tamen accidit ut et navium materia prohibeatur, si hostis ea quam maxime indigeat at absque ea commode bellum gerere haud possit.—*Quæstionum Juris Publici*, L. I., chap. x., page 80.

tfully be deemed so. And the same idea seems have been adopted by *Grotius* [1] and some other iters on public law. I have not met with one ose opinion excludes naval stores from the list of ntraband.

Grotius, in discussing this question, divides goods nto three classes: 1. Those which are of use only in war, as arms, etc. 2. Those which serve only for pleasure. 3. Those useful for peaceable as well as for warlike purposes, "as money, *provisions*, ships, and *naval stores*." Concerning which he argues in substance, that the first class are clearly contraband, that the second class are clearly not contraband, and that the third class may or may not be so, according to the state and circumstances of the war; alleging that, *if necessary to our defence, they may be intercepted*, but upon condition of restitution, unless there be just cause to the contrary; which just cause is explained by the examples of sending them to a besieged or blockaded place.

The reasoning about the third class has a very inconvenient latitude. It subjects the trade of neutral nations too extensively to the discretion of belligerent powers; and yet there is a serious embarrassment about drawing the true line, one which will duly conciliate the safety of the belligerent with that of the neutral party.

What definition of contraband, consulting reason alone, shall we adopt? Shall we say, that none but articles peculiar to war ought to receive this denomination? But is even powder *exclusively ap-*

[1] Book III., chaps. i., v.

plicable to war? Are nitre and sulphur, its chief ingredients, *peculiar* to war? Are they not all useful for other purposes; some of them in medicine, and other important arts? Shall we say, that none but articles prepared and organized for war, as their primary object, ought to have that character? But what substantial difference can reason know, between the supply to our enemy of powder, and that of sulphur and saltpetre, the easily convertible materials of this mischievous compound?

How would either of these definitions, or any other, comport with what those of our treaties which are thought unexceptionable, in this particular, have regulated, or with what is common in the treaties between other nations? Under which of them shall we bring horses and their furniture?

If we say that, in wars by land, these are instruments little less important than men, and for that reason ought to be comprehended, it may be asked in return, what can be more necessary in wars by sea than the materials of ships, and why should they not, for the like reasons, be equally comprehended?

In wars between maritime nations, who transfer its calamities from the land to the ocean, and wage their most furious conflicts on that element, whose dominions cannot be attacked or defended without a superiority in naval strength, who moreover possess distant territories, the protection and commercial advantages of which depend upon the existence and support of navies, it is difficult to maintain, that it is against reason, or against those principles which regulate the description of contraband, to consider

as such the materials which appertain to the construction and equipment of ships.

It is not a sufficient objection that these articles are useful for other purposes, and especially for those of maritime commerce. Horses are of primary utility in agriculture; and it has been seen that there are other articles indisputably on the list of contraband, which are entirely within the principle of that objection.

Rutherforth, a sensible modern writer,[1] after truly observing, "that the notion of contraband goods is of some latitude, so that it is not easy precisely to determine what are and what are not of this sort; that all *warlike stores* are certainly contraband, but that still the question returns, what are to be reckoned warlike stores?"—after noticing the division of articles by Grotius and the difficulties with regard to the third class—draws this conclusion, that "where a war is *carried on by sea* as well as by land, not only ships of war which are already built, but the materials for building or repairing of ships, will come under the notion of *warlike stores*." This is a precise idea, and, it must be confessed, on principle, not an irrational one.

If we resort to the opinions which have been entertained and evidenced in our own country, they will be found to have given great extent to the idea of contraband. Congress, by an act of May the 8th, 1777, establishing the form of commissions for privateers, authorize them "to attack, subdue, and take all ships and other vessels whatever, carrying

[1] *Institutes of Natural Law*, Book II., chaps. x., xix.

it is there is so great a diversity in the stipulations of different parties on this point, indicating that there is no absolute rule. Hence also it is, that several nations at different times, being at war, have thought themselves authorized to regulate and announce, by public declarations, the articles which they would consider and treat as contraband.

The opinion of writers will be found to support the article as it stands, in the particular, which is now the subject of discussion.

Vatel, we have before seen (B. B. C. 3, 6, 7, S. 112), expressly ranks *naval stores* and *timber* under the denomination of contraband goods.

Heinecius (*De Navibus*, etc., chap. I., S. 10, 11, and 14) accords in the same position to the extent of whatsoever appertains to the equipment of vessels.[1]

Bynkershoek is less explicit. After laying it down as the general rule that naval stores, or the materials of ships, are not contraband, he proceeds thus: "Yet it sometimes happens that the materials of ships may be prohibited, *if an enemy is in great want of them, and without them cannot conveniently carry on the war*"[2]; and he afterwards cites, with approbation, several edicts or proclamations which the states-general, in different wars with different nations, have published, declaring those articles contraband—thus referring it to the belligerent party to judge of and pronounce the cases when they may

[1] Vela, Restes et si quæ alia ad apparatum nauticum pertinent.

[2] Quandoque tamen accidit ut et navium materia prohibeatur, si hostis ea quam maxime indigeat at absque ea commode bellum gerere haud possit.—*Quæstionum Juris Publici*, L. I., chap. x., page 80.

The period of the negotiation was most unpropitious to a change for the better; in the midst of any maritime war, a belligerent nation, enjoying a naval superiority, was like to have been tenacious of a right which she supposed herself to possess to intercept naval supplies to her enemy. But in a war, in which it was more than ordinarily possible that the independent existence of a nation might depend on the retaining a naval superiority, it was to have been foreseen that she would not consent to relinquish such a right. The alternative was, to insert the article as it stands, or to omit it wholly.

Had it been omitted, the condition of naval stores would have been the same as with it. But our merchants would then have continued to be exposed to uncertain risks, which is always a great inconvenience. It is desirable, in similar cases, to have a fixed rule. Merchants can then accommodate their speculations to the rule; and causes of national contention are avoided.

It is in this view to be regretted, that the cases when provisions may be treated as contraband could not have been agreed upon; but as this was impracticable, the next best thing has been done, by establishing the certainty of compensation in all such cases. This gives one important species of security, obviates one source of contention. And if really there may be other cases than the universally admitted ones, in which provisions can fairly be deemed contraband (as that designated by the act of Congress of May, 1777), the securing of compensation was truly a point gained by the article.

But while I confess, that the including of naval stores among contraband articles is an ineligible feature of the treaty, I ought to declare, that its consequences to the interests of the United States, as it regards the trade in those articles in time of war, do not appear to me important. War between other nations, when we are at peace, will always increase the demand for our bottoms, so as to require much additional building of vessels, and probably in that way to produce a more beneficial species of employment of the naval stores our country affords, than that of their exportation for sale.

The adversaries of the treaty are eagle-eyed to spy out instances in which it omits any favorable minutes which are found in our other treaties; but they forget to balance the account by particulars which distinguish it favorably from those treaties. Of this nature is the omission of horses from the list of contraband, and still more the salutary regulations, with regard to vessels and their cargoes going to places besieged, blockaded, or invested. I do not discover that these useful provisions, or their equivalents, are in either of our treaties with France, Holland, or Sweden.

It has been said, in reference to this article, "whenever the law of nations has been a topic for consideration, the result of the treaty accommodates Great Britain, in relation to one or both of the republics at war with her, as well as in the abandonment of the rights and interests of the United States,"—and the following examples are given, to each of which will be annexed a reply.

I.—"American vessels, bound to Great Britain, are protected, by sea-papers, against French and Dutch searches; but when bound to France or Holland, are left exposed to British searches, without regard to ships' papers." The truth of this proposition depends on another, which is, that the sea-papers are to be absolutely conclusive; but reasons have been given for doubting this construction, which, it has been remarked, does not obtain in practice. And it is certainly a violent one, inasmuch as it puts it in the power of the neutral, to defeat the rights of the belligerent party, in points of great consequence to its safety.

II.—"American provisions, in American vessels, bound to the enemies of Great Britain, are left by the treaty to the seizure and use of Great Britain; but provisions, whether American or not, in American vessels, cannot be touched by the enemies of Great Britain." The construction of the treaty, upon which this difference is supposed, has been demonstrated to be erroneous. The difference, therefore, does not exist.

III.—"British property, in American vessels, is not subject to French or Dutch confiscation. French or Dutch property, in American vessels, is subject to British confiscation." This was the case before the treaty, which makes no alteration in the matter. Moreover, it is counterbalanced by this circumstance: that American property, in British vessels, is subject to confiscation by France or Holland; but American property, in French or Dutch vessels, is not subject to confiscation by Great Britain.

IV.—"Articles of ship-building, bound to the enemies of Great Britain for the equipment of vessels of trade only, are contraband; bound to Great Britain, for the equipment of vessels of war, are not contraband." This, also, was the case before the treaty, which, consequently, has not, in this particular more than the former, produced any benefit to one party, to the prejudice of the other. I forbear to dwell upon the article of horses, as falling under a contrary discrimination; nor shall I insist on the additional circumstances, that all American goods not generally contraband, if going to a place besieged, blockaded, or invested by French or Dutch forces, are liable to confiscation by France or Holland; if going to a place besieged, blockaded, or invested by British forces, are not liable to confiscation by Great Britain.

Differences of these several kinds are the accidental results of the varying views of different contracting powers, and form slender grounds of blame or praise of the respective contracts made with them.

The form of the criticisms last stated leaves little doubt that it was designed to insinuate an intention in this article to favor the monarchs of Great Britain, at the expense of the republics of France and Holland. The candor of it may be judged of by the two facts: first, that it makes no alteration, in this view, in the antecedent state of things; and secondly, that the relative situation of Holland, as the enemy of Great Britain, is subsequent to the adjustment of the article.

CAMILLUS.

NO. XXXIV [1]

1796.

The remaining articles of the treaty principally relate to those maritime regulations that are usually inserted in modern treaties between commercial nations, and on that consideration, as well as from their evident utility in enabling us to distinguish with precision between what is and what is not lawful in relation to those points, they are entitled to our approbation; still, however, even some of these customary articles, whose object and meaning are so well understood, have been deemed exceptionable.

The first paragraph of the nineteenth article, in order to prevent injuries by men of war, or privateers, enjoins (as before noticed) all commanders of ships of war and privateers, and all other citizens or subjects, of either party, to forbear doing any damage to those of the other, or from committing any outrage against them; and declares that, if they act to the contrary, they shall be punishable, and, moreover, bound in their persons and estates to make full satisfaction and reparation for all damages, of whatsoever nature the same may be.

These prohibitions are conformable with the laws

[1] John C. Hamilton says (*History of the Republic*, vi., 273): "It is perceived . . . that the first twenty-two numbers, the original drafts of which are in Hamilton's autograph, were exclusively his. Of the remaining essays, ten, Nos. 23 to 30, both included, 34 and 35, were from another pen, with frequent alterations, interlineations, and additions by Hamilton. The residue of the numbers, being six, are also Hamilton's exclusively." Rufus King assisted Hamilton in the essays of Camillus, and to him the authorship of Nos. 34 and 35, as well as Nos. 23 to 30, inclusive, may be attributed.

of the United States. If, under color of authority, those to whom the same does not relate shall receive injury, the act, according to its circumstances, is an offence, for which the offender is not only answerable to his own country, but, moreover, to the injured party, to whom he is bound to make full and complete reparation.

The open and explicit views of the parties, and their mutual engagement to put this law in execution against all offenders, will be a salutary check upon the too frequent irregularities that occur in the course of war between maritime nations. The paragraph is a copy of a similar one contained in the fifteenth article of the commercial treaty between France and Great Britain, concluded in 1786, and agrees with the fourteenth article of our treaty with Holland. In order to guard still more effectually against the injuries to which the citizens and subjects may be exposed from the private ships of war of each other, the next paragraph stipulates that all commanders of privateers, before they receive their commissions, shall be subjected to give security, by at least two responsible sureties, who have no interest in the privateer, in the sum of fifteen hundred pounds sterling, or six thousand six hundred and sixty-six dollars; or, if the privateer is manned with more than one hundred and fifty men, in the sum of three thousand pounds sterling, or thirteen thousand three hundred and thirty-three dollars, to satisfy all damages and injuries committed by such privateers, her officers, or any of her men, against the tenor of the treaty, or the laws and instructions

for the regulation of their conduct; and in case of aggression the commission of such privateer shall be recalled and made void.

This particular regulation has been frequently introduced in modern treaties, and exists in this precise shape in the last treaty of commerce between France and Great Britain; I have found no instance where a larger sum has been mentioned. It has, with little consideration, been made an objection to this regulation, that the amount of the bonds is not adequate to compensate or satisfy the damages that may be committed by these privateers.

The preceding part of the article gives the injured party a remedy against the persons and estates of the aggressors; the bonds are not required for the exclusive purpose of being the fund to which the injured may have recourse for satisfaction, but principally for the purpose of excluding from the command of privateers those dissolute and irregular characters, who are not restrained by either moral or political ties, and for whose good behavior responsible and disinterested men would not become bondsmen. The same principle is developed in the civil administration of every nation. In cases of pecuniary trust, it is a common and useful precaution to require surety for the faithful discharge of the office; and the principal advantage of this regulation is to secure the employment of virtuous and upright officers. The amount of the bonds required on these occasions is sufficient for this purpose, though inferior to the property confided to them.

Thus the Treasurer of the United States, who has

the custody of millions, gives bonds for only one hundred and fifty thousand dollars, the collectors of New York and Philadelphia for fifty and sixty thousand dollars; sums very far short of the public money [of which they are in the receipt], yet sufficient to secure the public against characters of doubtful integrity. The adequacy of the sums [in the particular case] is moreover evidenced by the law and practice of our own country. In the resolution of Congress, of the third of April, 1776, which, so far as regards this point, remained in force throughout the American war, Congress required that the commander of every privateer, before his commission should be delivered to him, should give bonds, with sureties, to the President of Congress, in the sum of five thousand dollars, if the vessel was of or under one hundred tons; and of ten thousand dollars, if the vessel was upwards of one hundred tons, to observe the rules and instructions prescribed for their government. These sums are one quarter less than those required by the article before us.

The last paragraph, requiring the judges of the admiralty courts to furnish formal and duly authenticated copies of their proceedings in cases of the condemnation of vessels or cargoes belonging to the citizens or subjects of the parties, is pursuant to that reasonable course of proceeding which ought always in this and similar cases to prevail.

The twentieth article, which is in prevention of piracy, has the sanction of numerous precedents. A pirate is the common enemy of all mankind. All, therefore, should unite in refusing him assistance and

refuge, and in the establishment of such regulations relative to the sale of his plunder as, by shutting against him every market, may thereby annihilate the motives to his piracy.

The twenty-first article stipulates, that the citizens and subjects of the parties shall do no acts of hostility or violence against each other, nor accept commissions or instructions so to act from any foreign state being an enemy to the other party. That the enemies of either nation shall not be allowed to invite, or endeavor to enlist, in their military service, any of the citizens or subjects of the other; and the laws prohibiting such offences are to be punctually executed. The article further stipulates, if any citizen or subject of either party has accepted of a foreign commission to arm a privateer against the other, it shall be lawful for the said party to treat and punish the said citizen or subject, ***having such commission***, as a pirate.

The general tenor of this article is in conformity with the spirit of our preceding laws on this subject; it is, moreover, in perfect unison with the duties of neutrality; those duties which a just regard to the principles of integrity, as well as an enlightened pursuit of our own interests, require us faithfully to perform.

Two objections have been offered against this article: one that it precludes such of our citizens as, with a view of acquiring military knowledge, would otherwise engage as volunteers in foreign service; the other, that it [makes] every citizen and subject, of either party, who has accepted a foreign commis-

sion to arm a privateer against the other, and who shall be taken in possession of such commission, [liable] to be punished as a pirate.

In respect to the first objection, if, by a rigorous construction, the case is included within the prohibition, it should be remarked, that it is applicable only to such engagements as commence and are made in time of mutual war. If we have citizens who, with the view of military education, are inclined to engage in foreign service, though from past experience there is not much reason to conclude that the examples would be numerous, they have full scope, as I understand the article, in the periods of peace, to enter into any of the regular armies of Europe that they may prefer; and being thus engaged, they are free to make the campaigns of war against Great Britain, if that is their passion, without injuring this article. [The prohibition seems to be against engaging in the military service of a nation, previously in the condition of "*enemy*" to one of the parties.]

The second objection has even less plausibility than the first: the disingenuous means that have been used to excite a reprobation of this clause of the article, manifest the want of truth and patriotism of those who have employed them; passion and the spirit of opposition have asserted, that the provision before us is so extensive as to place the subordinate officers and private men, on board of a privateer, within the predicament of her commander; nay, that all persons, citizens or subjects of either nation, who would accept commissions [or enter, in any capacity] in a foreign army or navy, would, in

consequence of this stipulation, be liable to be treated and punished as pirates. It is sufficient, after noticing these attempts to impose upon the public, to observe that the stipulation [*expressly*] confines the punishment in question to the commanders of privateers who, contrary to the laws of the land, and the clear and equitable obligations of the members of a neutral nation, shall be taken with such commission; and that it does not extend to the under-officers or crew, much less to such persons as, contrary to the preceding inhibition of the article, should accept commissions in a foreign army or navy. In respect to such misdemeanors in all cases (except that of equipping and commanding a privateer, which will expose the commander, when taken, to be punished as a pirate), the offence is cognizable only by the nation [within whose jurisdiction the offence is committed, or] of which the offender is a citizen, or subject; and, by our laws, is punishable only by fine and imprisonment.

[A perversion of the sense of the clause, stipulating that "the law against all such offences and aggressions shall be punctually executed," has been attempted, though nothing can be more innocent or unexceptionable. Its plain meaning is, that each party, in the cases falling within its jurisdiction, shall faithfully put in execution its own laws against the offences and aggressions, in contravention of the article. A stipulation between the governments, to execute laws on a certain subject, can mean nothing else than that each shall execute its own laws on that subject, in the cases appertaining to its jurisdiction.]

Though most of the objections preferred against the treaty are marked with that illiberal spirit which characterizes the party who have unceasingly labored to bring into discredit the government of the country, yet few of them have been less veiled than this, which condemns a stipulation intended to curb and restrain the few dissolute and daring characters who, from the least worthy of all motives that lead to military enterprise, might otherwise engage in this piratical warfare.

What virtuous citizen would feel himself justified in accepting such command? What must be the morals of those instructors who contend for a freedom to commit what humanity and honor forbid? Every treaty that we have concluded with other nations is enriched with this stipulation; not only our own treaties, but those between other nations contain it. How is it that we nowhere discover a trace of disapprobation, either on the part of our statesmen, or from an enlightened people, against a series of treaties, formed by different public ministers, and ratified by a succession of Congresses, each of which contains a provision that the crime of accepting a foreign commission to arm and command a privateer, against a nation with whom we are at peace, shall be treated and punished as piracy? Is it that our virtue has become less severe? our morality more indulgent? Or is it that our predecessors were less vigilant in defending the rights of our citizens, than the ostentatious patriots of the present day? But it is time to dismiss an objection entirely destitute of integrity and [decency]. CAMILLUS.

NO. XXXV

1796.

The twenty-second article bears upon its face its own justification—it is pursuant to those [maxims which enlightened moralists recommend, and just nations respect]. It prescribes a course of conduct the most likely to procure satisfaction for injuries, and to maintain peace, and is therefore entitled to the approbation of all good men and real patriots. [It is particularly valuable to a weak nation, or a nation in its infancy, as an additional guard against sudden and unforeseen attacks of more powerful rivals.]

The first paragraph of the twenty-third article provides for the hospitable reception of the public or national ships of war of the parties, in the ports of each other; and engages that the officers of such ships shall be free from insult, and treated with decorum and respect.

The practice which our Government has adopted in relation to these points, independent of parties, is agreeable to this provision.[1] And though the stipulation will be of less importance to us than it would be were we possessed of a respectable naval force, yet it may be useful. By our treaty with France, our ships of war have a right to enter their ports only in case of urgent necessity, and not freely and for mere convenience.

With Spain and Portugal we have no treaties, and, consequently, not an ascertained or perfect right to

[1] See Mr. Jefferson's letter of September 9, 1793, to Mr. Hammond; also his letter of the same date to Mr. Van Berckel.

use their ports. Our navigation must be protected from the Barbary powers by force or by treaty. It is questionable whether the latter mode will prove effectual without the support of the former; Congress have therefore resolved to equip a small naval force, for the special object of protecting our trade against the Algerine and the other Barbary powers. Some port convenient to the scene of its cruising will be of essential advantage to the efficiency and success of its employment; not only the ports of Great Britain, but likewise the port of Gibraltar, will, by this article of the treaty, be open to us; and our frigates will there be entitled to a hospitable reception, and their officers to that respect which shall be due to the commissions which they bear.

The other paragraph of this article provides, in case an American vessel, by stress of weather, danger from enemies, or other misfortune, should be obliged to seek shelter in any British port, into which, in ordinary cases, such vessels could not claim the right to be admitted, that she shall be hospitably received, permitted to refit, and to purchase such necessaries as she may want; and, by permission of the local government, to sell such part of her cargo as may be necessary to defray her expenses. Our treaty with France contains a similar provision; but the restrictions with which it is guarded are less than those of the article before us.

The twenty-fourth article stipulates that it shall not be lawful for any foreign privateers, commissioned by any nation at war with either of the parties, to arm the vessels, or to sell or exchange their

prizes, in the ports of either of the parties; and that they shall not be allowed to purchase more provisions than shall be necessary to carry them to the nearest port of the nation from whom they received their commission; and the twenty-fifth article stipulates that the ships of war and privateers of either party may carry whithersoever they please the ships and goods taken from their enemy; and that such prizes, on their arrival in the ports of the parties, shall not be searched, seized, detained, nor judicially examined touching the validity of their capture, but may freely depart; and furthermore, that no shelter or refuge shall be given in the ports of one of the parties to such as have made prizes upon the citizens or subjects of the other. Though the law of nations is explicit, that one nation having formed a particular stipulation with another, is not capable, by a subsequent treaty with a third nation, to do away or annul its former stipulations, but that the elder treaty, in such case, remains in full force, notwithstanding such posterior and contradictory treaty; yet, in order to remove all cavil on this point, and to maintain a scrupulous regard to good faith, even in appearance as well as in reality, and especially in relation to our treaty with France, the article further declares, "that nothing in the treaty contained shall be construed or operate contrary to former and existing public treaties with other sovereigns or states," and adds that neither of the parties, while they continue in friendship, will form any treaty inconsistent with this and the preceding article. [This last clause has been censured as an undue restraint,

while it is in fact a mere redundancy; as long as a treaty between two nations continues in force, it is against good faith for either to form a treaty with another nation inconsistent with it; if the treaty is once disclosed, by whatever means, no treaty with another nation can be inconsistent with it. The clause, therefore, only converts into an express promise what without it is an implied one, that the parties will not contravene their stipulations with each other by repugnant engagements with a third party. The disingenuity on this point has gone so far as to torture the clause into a positive stipulation against any treaty with another power conferring peculiar advantages of commerce upon that power. It is a sufficient reply to this that the clause is expressly confined to the twenty-fourth and twenty-fifth articles; determining nothing as to the other articles of the treaty. The general principle of this last objection has been sufficiently discussed elsewhere.]

The article concludes with a mutual engagement, that neither of the parties will permit the ships or goods of the other to be taken within cannon shot of the coast, nor in any of the bays, ports, or rivers of their territories; and in case of such capture, the party whose territorial rights are violated shall use his utmost endeavors to obtain satisfaction for the vessels or goods taken. This stipulation is conformable to the duty and practice of nations who have entered into no special engagements requiring the same, and agrees with a common provision in public treaties.

Hitherto we have prudently avoided granting to any nation a right to arm their privateers or to sell their prizes in our ports; our laws are explicit in prohibiting such equipments; and the exclusion thereof, contained in the twenty-fourth article, is agreeable to the declared policy of the country. We have engaged in our treaty with France to prohibit her enemies from selling their prizes within our ports; but not having engaged to permit France to sell her prizes therein, we were free to agree with Great Britain, that her enemies shall likewise be prohibited from selling their prizes in our territory. A clause in the twenty-fifth article denies all refuge to ships of war and privateers that have made prizes on either of the parties; and the last clause of the twenty-fourth article stipulates that foreign privateers, enemies to either of the parties, shall not be allowed to purchase more provisions than sufficient to carry them to the nearest port of the nation from whom they received their commission.

These clauses will operate only against such nations as have not, by an elder treaty, secured a right of reception in the ports of the parties. Still, however, it is alleged that these articles violate our treaty with France. It has already been observed that the treaty contains a clear and explicit agreement of the parties, excepting from its operation all former existing public treaties. Our treaty with France is an antecedent and existing public treaty, and consequently excepted, in all its parts, from the operation of the treaty before us. Whatever right or privilege, therefore, is secured to France in virtue of that

treaty, she will continue to enjoy, whether the same respects the reception of her public ships of war, privateers or prizes, in our ports, or the exclusion therefrom of those of her enemies.

Could there be a doubt on this point, the practice of other nations, and especially that of France, on the very point, would effectually remove it. The fifteenth and thirty-sixth articles of the commercial Treaty of Utrecht, between France and Great Britain, contain the same stipulations as the twenty-fourth and twenty-fifth articles of the treaty before us. That treaty was in existence and force at the time of forming our treaty with France, yet France found no difficulty in the insertion of the same stipulations in her treaty with us. She could not have considered their insertion in the treaty with us as a violation of her treaty with Great Britain, otherwise good faith would have restrained her. The war that soon after took place between France and Great Britain, dissolved the Treaty of Utrecht. Our treaty with France remained in force; yet, in the year 1786, France and Great Britain entered into a commercial treaty, the sixteenth and fortieth articles of which renew the stipulations contained in the fifteenth and thirty-sixth articles of the Treaty of Utrecht.

If France was free, first to form these stipulations with us in 1778, notwithstanding her prior and existing treaty with Great Britain, and afterwards in 1786 to renew the same stipulations with Great Britain, we must be equally free in a treaty with the same, or any other power, to agree to similar stipulations.

Both were free, and neither violates former engagements, by assenting, as we have done, to these stipulations in a posterior treaty.

It is further alleged, that these articles are injurious to the interest of the United States, because they prohibit, in certain cases, foreign privateers to rendezvous in our ports, and to sell within our territory the prizes they may have taken. If it is desirable to render our principal seaports and cities scenes of riot and confusion; if it is politic to divide our citizens, by infusing into their minds the hostile spirit with which the nations at war are animated against each other; if we are prepared to see the prostration of public authority, and to behold the laws trampled upon by armed banditti; if we are ready to invite our citizens to abandon their regular and useful employments, and to engage, as adventurers, even against each other, in the pursuit of plunder, then is the objection well-founded, then is the restraint pernicious, then is the stipulation worthy of condemnation. But if to establish the reverse of all this, is the effort and aim of every wise and prudent government, the stipulation in question demands the approbation of all virtuous citizens.

But were none of these consequences to be apprehended from the free admission of the privateers of all nations engaged in war, and the permission to sell their plunder, it would, notwithstanding, be against the interests of the United States to allow the same. It is a sound commercial principle, that the interest of buyers, as well as sellers, is best promoted by a free competition. The great number of the sellers of for-

eign manufactures and productions affords the best market for the buyers. The great number of buyers of our productions affords the best market for the sellers. Foreign privateers are precarious sellers, and buyers only for their own consumption. They drive away and banish from our markets, both buyers and sellers. When our coasts are lined with foreign privateers that rendezvous in our ports, the merchantships of all nations, not excepting our own, will be liable to interruption, and discouraged from coming to our markets; and those of the belligerent powers will be generally excluded. Our markets might, perhaps, derive supplies from the prizes that such privateers should take, so as, in some degree, to compensate for the deficiency that would proceed from the exclusion of foreign merchantmen; but this supply would be uncertain, irregular, ill-assorted, and partial, while the principal commercial detriment would exist without mitigation,—that of a partial or total destruction of foreign competition in the purchase of our agricultural and other productions.

If, moreover, it is the duty as well as the interest of the United States, to observe an exact and scrupulous neutrality, amidst the wars of other nations, one of the most efficacious means of effecting that purpose will be, to remove every temptation that might lead our citizens to an opposite course. No allurement would be more likely to seduce them from their duty than that which is offered by the expected gains of privateering; no avenue of political mischief should, therefore, be more carefully closed.

If these articles are exceptionable, in any respect,

it is that, in imitation of the analogous articles of our treaty with France, they allow the privateers of the parties, in cases not inconsistent with former treaties, to rendezvous in, and their prizes to be brought into, each other's ports and harbors. It would, in my judgment, have been the true policy of the United States, as well with the view of maintaining an impartial and decided neutrality in the wars of Europe, from a participation in which our remote situation, with [due] prudence, is an exemption, as likewise, in order to promote, in the most advantageous manner, our national prosperity, totally and for ever to have excluded all foreign privateers and prizes from our ports and harbors.

But having entered into these stipulations with France, by which she has the use of all our ports against all other nations, we having the use of her ports only against those nations who have not an elder treaty with her, it would have manifested an unwise partiality to have refused to enter into similar stipulations with other nations who might desire them; accordingly they are found in others of our treaties with

as well as in that under consideration—another refutation of the objection to this last as being in these respects repugnant to that with France.

The twenty-sixth article provides, in case of a rupture between the parties, that the merchants and others of each nation, residing in the dominions of the other, may maintain and continue their trade during good behavior; in case, however, their conduct should become suspicious, they may be removed, and

a twelve-month after the publication of the order of removal is to be allowed for that purpose; but this term is not to be granted to such persons as act contrary to law, or are guilty of any offence against the government; all such persons may be forthwith removed or sent out of the respective dominions of the parties. The residue of the article is calculated to ascertain the condition of the parties, when the rupture shall be deemed to exist. Each nation remains the exclusive judge of the foreigners among them, and will be able to decide from their behavior, how far their residence may be compatible with the public safety. In case of suspicion only, that their residence will prove detrimental, they may order them to depart, reasonable time being allowed them to collect their effects. On the one hand, the article affords to the parties perfect security against the irregular and suspicious conduct of foreigners who may be among them on the breaking out of war, and, on the other hand, consults, with that liberality which the modern usage of nations sanctions, the safety and convenience of those who, under the faith of the respective governments, have chosen a residence in the dominions of the parties. Our treaties with France, Holland, and Sweden secure to the merchants of the respective parties a limited period, after the commencement of war, within which they may collect their effects, and remove; the article before us, relative to this subject, is a transcript of the second article of the treaty of commerce, of 1786, between France and Great Britain. [The objection, therefore, to there being a certain term within which

they cannot be removed upon bare suspicion, lies against our other treaties and against almost all the treaties of Europe for many years. The pretence to order away upon mere supposition would defeat all the stipulations, that allow a certain term to collect, sell, and remove debts and effects; and for that reason could not be supported.

The remainder of the article, which gives an option to each party, either to request the recall, or *immediately to send home*, the ambassador of the other without prejudice to their mutual friendship and good understanding, is a valuable feature. The power "*immediately to send home*," without giving offence, avoids much delicate embarrassment connected with an application to recall; it renders it easier to arrest an intriguing minister in the midst of a dangerous intrigue, and it is a check upon the minister by placing him more completely in the power of the government with which he resides. These last circumstances are particularly important to a republic, one of the chief dangers of which arises from its exposure to foreign intrigue and corruption.]

The twenty-seventh article, which provides for the delivery of all persons charged with murder or forgery committed within the jurisdiction of one party, and who have taken refuge within the territories of the other, is a regulation of peculiar worth between nations whose territories are contiguous to each other. Without such regulation, the ease with which the perpetrators of these atrocious crimes might escape punishment, especially on the frontiers, by passing out of one jurisdiction into the other, would, in a

great measure, destroy the security against these offences, that arises from the fear and certainty of punishment. The provision that such delivery shall not be made unless upon the exhibition of such evidence of criminality as, according to the laws of the place where the fugitive shall be found, would justify his apprehension and commitment for trial, if the crime had been there committed, will prevent vexatious requisitions, and is a caution due to the rights of individuals.

The twenty-eighth and concluding article establishes, that the first ten articles of the treaty shall be permanent; that the remaining ones, except the twelfth, which, with the twenty-fifth, constitutes the body of the commercial part of the treaty, shall be limited in their duration to twelve years; and reciting, that the twelfth will end, by its own limitation, at the end of two years after the termination of the present European war, further establishes, that, within the last-mentioned term, and in time to perfect the business by the expiration of that term, the discussion of the subject of the twelfth article shall be renewed, and if the parties cannot agree on such new arrangement, concerning it, as may be satisfactory, that then all the said remaining articles (in other words, all but the first ten) shall cease and expire together. This article, which is an entirely independent one, obviates the doubt, affected to be entertained, whether the exception in the ratification, with regard to the twelfth article, did not do away with the stipulation, by which the continuance of the treaty, except the first ten articles, beyond the term

of two years after the expiration of the war, is made to depend on a further arrangement of the West India trade. This separate article is positive and conclusive, absolutely annulling the treaty at that time, if such an arrangement be not made, and thereby places it in the power of either party so to manage the matter as to put an end to all the commercial part of it, except what relates to inland trade and navigation with the neighboring British territories, at the end of the short period of two years from the termination of the existing war. This alone is sufficient to confound all the high-charged declamations against the tendency of the treaty to ruin our trade and navigation.

CAMILLUS.

NO. XXXVI

1796.

It is now time to fulfil my promise of an examination of the constitutionality of the treaty. Of all the objections which have been contrived against this instrument, those relating to this point are the most futile. If there be a political problem capable of complete demonstration, the constitutionality of the treaty, in all its parts, is of this sort.—It is even difficult to believe, that any man in either house of Congress, who values his reputation for discernment or sincerity, will publicly hazard it by a serious attempt to controvert the position.

It is, nevertheless, too much a fashion with some politicians, when hard pressed on the expediency of a measure, to intrench themselves behind objections to

its constitutionality—aware that there is naturally in the public mind a jealous sensibility to objections of that nature, which may predispose against a thing otherwise acceptable, if even a doubt, in this respect, can be raised. They have been too forward to take advantage of this propensity, without weighing the real mischief of the example. For, however it may serve a temporary purpose, its ultimate tendency is, by accustoming the people to observe that alarms of this kind are repeated with levity and without cause, to prepare them for distrusting the cry of danger when it may be real: yet the imprudence has been such, that there has scarcely been an important public question, which has not involved more or less of this species of controversy.

In the present case, the motives of those who may incline to defeat the treaty, are unusually strong for creating, if possible, a doubt concerning its constitutionality.

The treaty, having been ratified on both sides, the dilemma plainly is between a violation of the Constitution, by the treaty, and a violation of the Constitution by obstructing the execution of the treaty.

The VIth article of the Constitution of the United States declares, that "the Constitution and the laws of the United States, made in pursuance thereof, all *treaties made, or which shall be made, under the authority of the United States*, shall *be the supreme law of the land*, any thing in the constitution or laws of any State to the contrary notwithstanding." A law of the land, till revoked or annulled, by the competent authority, is binding, not less on each

branch or department of the government than on each individual of the society. Each house of Congress collectively, as well as the members of it separately, are under a constitutional obligation to observe the injunctions of a pre-existing law, and to give it effect. If they act otherwise, they infringe the Constitution; the theory of which knows, in such case, no discretion on their part. To resort to first principles for their justification, in assuming such a discretion, is to go out of the Constitution for an authority which they cannot find in it; it is to usurp the original character of the people themselves; it is, in principle, to prostrate the government.

The cases must be very extraordinary that can excuse so violent an assumption of discretion. They must be of a kind to authorize a revolution in government; for every resort to original principles, in derogation from the established Constitution, partakes of this character.

Recalling to view, that all but the first ten articles of the treaty are liable to expire at the termination of two years after the present war, if the objection to it in point of constitutionality cannot be supported, let me ask, who is the man hardy enough to maintain, that the instrument is of such a nature as to justify a revolution in government?

If this can be answered in the affirmative, adieu to all the securities which nations expect to derive from constitutions of government. They become mere bubbles, subject to be blown away by every breath of party. The precedent would be a fatal one; our government, from being fixed and limited, would

become revolutionary and arbitrary; all the provisions which our Constitution, with so much solemnity, ordains "for forming a more perfect union, establishing justice, insuring domestic tranquillity, providing for the common defence, promoting the general welfare, and securing the blessings of liberty to ourselves and posterity," would evaporate and disappear.

Equally will this be the case, if the rage of party spirit can meditate, if the momentary ascendency of party, in a particular branch of the government, can effect, and if the people can be so deceived as to tolerate—that the *pretence* of a violation of the Constitution shall be made the instrument of its actual violation.

This, however, cannot be; there are already convincing indications on the very subject before us, that the good sense of the people will triumph over prejudice and the acts of party, that they will finally decide according to their true interest, and that any transient or partial superiority which may exist, if abused for the purpose of infracting the Constitution, will consign the perpetrators of the infraction to ruin and disgrace. But alas! what consolation would there be in the ruin of a party for the ruin of the Constitution?

It is time to enter on the momentous discussion. The question shall be examined in the four following views: 1. In relation to the theory of the Constitution. 2. In relation to the manner in which it was understood by the convention who framed it, and by the people who adopted it. 3. In relation to the

practice upon a similar power in the Confederation. 4. In relation to the practice under our present Constitution, prior to the treaty with Great Britain. In all these views, the constitutionality of the treaty can be vindicated beyond the possibility of a serious doubt.

1. As to the theory of the Constitution. The Constitution of the United States distributes its powers into three departments, legislative, executive, judiciary. The first article defines the structure, and specifies the various powers, of the legislative department; the second article establishes the organization and powers of the executive department; the third article does the same with respect to the judiciary department; the fourth and fifth and sixth articles, which are the last, are a miscellany of particular provisions.

The first article declares that "all *legislative power* granted by the Constitution shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives."

The second article, which organizes and regulates the executive department, declares that the "*executive power* shall be vested in a President of the United States of America"; and proceeding to detail particular authorities of the executive, it declares that the "President shall have power, by and with the advice and consent of the Senate, *to make treaties*, provided two-thirds of the senators present concur." There is in no part of the Constitution any explanation of this power to make treaties, any definition of its objects, or delineation of its bounds. The only

other provision in the Constitution respecting it is in the sixth article, which provides, as already noticed, that all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land!—and this notwithstanding any thing in the Constitution or laws of any State to the contrary.

It was impossible for words more comprehensive to be used than those which grant the power to make treaties. They are such as would naturally be employed to confer a *plenipotentiary* authority. A power "to make treaties," granted in these indefinite terms, extends to all kinds of treaties, and with all the latitude which such a power, under any form of government, can possess; the power "*to make*" implies a power to act *authoritatively* and *conclusively*, independent of the after-clause which expressly places treaties among the supreme laws of the land. The thing to be made is a treaty.

With regard to the objects of the treaty, there being no specification, there is, of course, a *carte blanche*. The general proposition must, therefore, be, that whatever is a proper subject of compact, between nation and nation, may be embraced by a treaty between the President of the United States, with the advice and consent of the Senate, and the correspondent organ of a foreign state.

The authority being general, it comprises, of course, whatever cannot be shown to be necessarily an exception to it.

The only constitutional exception to the power of making treaties is, that it shall not change the

Constitution; which results from this fundamental maxim, that a delegated authority cannot alter the constituting act, unless so expressly authorized by the constituting power. An agent cannot new-model his own commission. A treaty, for example, cannot transfer the legislative power to the executive department, nor the power of this last department to the judiciary; in other words, it cannot stipulate that the President, and not Congress, shall make laws for the United States,—that the judges, and not the President, shall command the national forces.

Again, there is also a *national* exception to the power of making treaties, as there is to every other delegated power, which respects abuses of authority in palpable and extreme cases. On natural principles, a treaty, which should manifestly betray or sacrifice the private interests of the state, would be null. But this presents a question foreign from that of the modification or distribution of constitutional powers. It applies to the case of the pernicious exercise of a power, where there is legal competency. Thus the power of treaty, though extending to the right of making alliances offensive and defensive, might not be exercised in making an alliance so injurious to the state as to justify the non-observance of the contract.

Beyond these exceptions to the power, none occurs that can be supported.

Those which have been insisted upon, towards invalidating the treaty with Great Britain, are not even plausible. They amount to this: that a treaty can establish nothing between the United States and a

foreign nation, which it is the province of the legislative authority to regulate in reference to the United States alone. It cannot, for instance, establish a particular rule of commercial intercourse between the United States and Great Britain; because it is provided in the Constitution, that Congress "*shall have power to regulate commerce with foreign nations.*" This is equivalent to affirming that all the objects upon which the legislative power may act, in relation to our country, are excepted out of the power to make treaties.

Two obvious considerations refute this doctrine: one, that the power to make treaties, and the power to make laws, are different things, operating by different means, upon different subjects; the other, that the construction resulting from such a doctrine would defeat the power to make treaties, while its opposite reconciles this power with the power of making laws.

The power to make laws is "the power of pronouncing authoritatively the will of the nation as to all persons and things over which it has jurisdiction"; or it may be defined to be "the power of prescribing rules binding upon all persons and things over which the nation has jurisdiction." It acts compulsively upon all persons, whether foreigners or citizens, and upon all things within the territory of such nation, and also upon its own citizens and their property without its territory in certain cases and under certain limitations. But it can have no obligatory action whatsoever upon a foreign nation, or upon any person or thing within the jurisdiction of a foreign nation.

The power of treaty, on the other hand, is the power by *agreement, convention*, or *compact*, to establish rules binding upon two or more nations, their respective citizens and property. The rule established derives its reciprocal obligation from promise, from the faith which the contracting parties pledge to each other, not from the power of either to prescribe a rule for the other. It is not here the will of a *superior* that commands; it is the consent of two independent parties that contract.

The *means* which the power of legislation employs are *laws* which it enacts, or rules which it enjoins; the *subject* upon which it acts is the nation of whom it is, and the persons and property within the jurisdiction of the nation. The *means* which the power of treaty employs are *contracts* with other nations, who may or may not enter into them; the *subjects* upon which it acts are the nations contracting, and those persons and things of each to which the contract relates. Though a treaty may effect what a law can, yet a law cannot effect what a treaty does. These discriminations are obvious and decisive; and however the operation of a treaty may, in some things, resemble that of a law, no two ideas are more distinct than that of *legislating* and that of *contracting*.

It follows that there is no ground for the inference pretended to be drawn, that the legislative powers of Congress are excepted out of the power of making treaties. It is the province of the latter to do what the former cannot do. Congress (to pursue still the case of regulating trade) may regulate, by law, our own trade and that which foreigners come to carry

on with us; but they cannot regulate the trade which we may go to carry on *in foreign* countries; they can give to us no rights, no privileges, there. This must depend on the will and regulations of those countries; and, consequently, it is the province of the power of treaty to establish the rules of commercial intercourse *between* foreign nations and the United States. The legislative may regulate our own trade, but treaty only can regulate the national trade between our own and another country.

The Constitution accordingly considers the power of treaty as different from that of legislation. This is proved in two ways: 1. That while the Constitution declares that all the *legislative* powers which it grants shall be vested in Congress, it vests the power of making treaties in *the President* with consent of the Senate. 2. That the same article by which it is declared that the *executive* power shall be vested in a President, and in which sundry executive powers are detailed, gives the power to make treaties to the President, with the auxiliary agency of the Senate. Thus the power of making treaties is placed in the class of executive authorities; while the force of laws is annexed to its results. This agrees with the distribution commonly made by theoretical writers, though perhaps the power of treaty, from its peculiar nature, ought to form a class by itself.

When it is said that Congress shall have power to regulate commerce with foreign nations, this has reference to the distribution of the general legislative power of regulating trade between the national and the particular governments; and serves merely to

distinguish the right of regulating our external trade, as far as it can be done by law, which is vested in Congress, from that of regulating the trade of a State within itself, which is left to each State.

This will the better appear from the entire clause. "The Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes," which is the same as if it had been said: The whole powers of regulating trade *by law* shall reside in Congress, except as to the trade within a State, the power to regulate which shall remain with such State. But it is clearly foreign to that mutual regulation of trade between the United States and other nations, which, from the necessity of mutual consent, can only be performed by treaty. It is indeed an absurdity to say, that the power of regulating trade by law is incompatible with the power of regulating it by treaty; since the former can, by no means, do what the latter alone can accomplish; consequently, it is an absurdity to say, that the *legislative* power of regulating trade is an exception to the power of making treaties.

Laws are the acts of legislation of a particular nation for itself. Treaties are the acts of the legislation of several nations for themselves jointly and reciprocally. The legislative powers of one state cannot reach the cases which depend on the joint legislation of two or more states. For this, resort must be had to the *pactitious* power, or the power of treaty. This is another attitude of the subject, displaying the fallacy of the proposition, that the legislative powers of Congress are exceptions to, or

limitations of, the power of the President, with the aid of the Senate, to make treaties.

CAMILLUS.

NO. XXXVII

1796.

It shall now be shown that the objections to the treaty, founded on its pretended interference with the power of Congress, tend to render the power of making treaties, in a very great degree, if not altogether, nominal. This will be best seen by an enumeration of the cases of pretended interference.

1st.—The power of Congress to lay taxes is said to be impaired by those stipulations which prevent the laying of duties on particular articles; which also prevent the laying of higher or other duties on British commodities than on the commodities of other countries; and which restrict the power of increasing the difference of duties on British tonnage and on goods imported in British bottoms.

2d.—The power of Congress to regulate trade is said to be impaired by the same restrictions respecting duties, inasmuch as they are intended, and operate, as regulations of trade; by the stipulations against prohibitions in certain cases; and, in general, by all the rights, privileges, immunities, and restrictions in trade, which are contained in the treaty; all which are so many regulations of commerce, which are said to encroach upon the legislative authority.

3d.—The power of Congress to establish a uniform rule of naturalization, is said to be interfered with by those provisions of the treaty which secure to the

settlers, within the precincts of the British posts, the right of becoming citizens of the United States, and those which, in certain cases, remove the disability of alienism as to property.

4th.—The power of Congress "to define and punish piracies and felonies, committed on the high seas, and offences against the law of nations," is said to be contravened by those parts of the treaty which declare that certain acts shall be deemed piracy, which constitute certain other things offences, and stipulate the reciprocal punishment of them by each.

5th.—It is also said that the Constitution is violated in relation to that provision which declares, that "no money shall be drawn from the treasury but in consequence of appropriations made by law"; by those parts of the treaty which stipulate compensations to certain commissioners, and indemnifications to Great Britain, in certain cases to be adjusted and pronounced by the commissioners; and, generally, by all those parts which may involve an expenditure of money.

6th.—The Constitution is said to be violated in that part which empowers Congress to dispose of, and make all needful rules and regulations respecting, the *territory*, or other property of the United States, by those provisions of the treaty which respect the adjustment of boundary in the cases of the rivers St. Croix and Mississippi.

Lastly.—The Constitution is said to be violated, in its provisions concerning the judiciary department, by those parts of the treaty which contemplate the confiding to the determination of

commissioners certain questions between the two nations.

A careful inspection of the treaty, with these objections in view, will discover that of the twenty-eight articles which compose it, at least seventeen are involved in the charge of unconstitutionality; and that these seventeen comprise all the provisions which adjust past controversies, or establish rules of commercial intercourse between the parties. The other eleven, which are the 1st, 9th, 10th, 17th, 18th, 19th, 20th, 22d, 23d, 24th, and 28th, except the 1st, are made up of provisions which have reference to war; the first merely declaring that there shall be peace between the parties. And it is a question, even with respect to all of these, except the first and tenth, whether they also are not implicated in the charge; inasmuch as some of their dispositions have commercial relations. Is not this alone sufficient to bring under a strong suspicion the validity of the principles which impeach the constitutionality of the instrument?

It must have been observed that the argument in the last number is applicable to all the legislative powers of Congress, as well as to that of regulating trade, which was selected, by way of illustration, on the ground of its being common to all. Indeed the instance of the regulations of trade is that which is most favorable to the opposite doctrine, since foreign nations are named in the clause; the true intent of which, however, has been explained.

The same reasoning, too, would extend the power of treaties to those objects which are consigned to

the legislation of individual States; but here the Constitution has announced its meaning in express terms, by declaring, that the treaties which have been and shall be made under the authority of the United States, shall be the supreme law of the land, any thing in the Constitution or laws of any State to the contrary notwithstanding. This manifestly recognizes the supremacy of the power of treaties over the laws of particular States, and goes even a step further.

The obvious reason for this special provision, in regard to the laws of individual states, is, that there might otherwise have been room for question—whether a treaty of the Union could embrace objects, the internal regulation of which belonged to the separate authorities of the States. But with regard to the United States there was no room for a similar question.

The power of treaty could not but be supposed commensurate with all these objects to which the legislative power of the Union extended, which are the proper subjects of compacts with foreign nations.

It is a question among some theoretical writers—whether a treaty can repeal *pre-existing laws?* This question must always be answered by the particular form of government of each nation. In our Constitution, which gives, *ipso facto*, the force of law to treaties, making them equal with the acts of Congress, the supreme law of the land, a treaty must necessarily repeal an antecedent law contrary to it; according to the legal maxim that "*leges posteriores priores contrarias abrogant.*"

But even in those forms of government, in which there may be room for such a question, it is not understood that a treaty containing stipulations which require the repeal of antecedent laws, is, on that account, unconstitutional and null. The true meaning is, that the antecedent laws are not, *ipso facto*, abrogated by the treaty; but the Legislature is, nevertheless, bound in good faith, under the general limitation stated in another place, to lend its authority to remove obstacles which previous laws might oppose to a fair execution of a treaty.

One instance of the inconsistency prevailing in the arguments against the treaty negotiated by Mr. Jay, is observable in this point. To get rid of the infractions of our treaty of peace with Great Britain by certain laws of particular States, it is strenuously maintained that treaties control the laws of States. To impeach the constitutionality of the treaty under consideration, it is objected that, in some points, it interferes with the objects of State legislation. The express provision of the Constitution in this particular, quoted above, has not been sufficient to check the rage for objection.

The absurdity of the alleged interferences will fully appear, by showing how they would operate upon the several kinds of treaties usual among nations. These may be classed under three principal heads: 1, treaties of commerce; 2, treaties of alliance; 3, treaties of peace.

Treaties of commerce are, of course, excluded; for every treaty of commerce is a system of rules devised to regulate and govern the trade between contract-

ing nations; invading directly the exclusive power of regulating trade which is attributed to Congress.

Treaties of alliance, whether defensive or offensive, are equally excluded, and this on two grounds: 1. Because it is their immediate object to define a case or cases in which one nation shall take part with another in war, contrary, in the sense of the objection, to that clause of the Constitution which gives to Congress the power of declaring war; and 2. Because the succors stipulated, in whatever shape they may be, must involve an expenditure of money—not to say, that it is common to stipulate succors in money, either in the first instance or by way of alternative. It will be pertinent to observe incidentally, in this place, that even the humane and laudable provision in the seventeenth article, which all have approved, is within the spirit of the objection; for the effect of this is to restrain the power and discretion of Congress to grant reprisals, till there has been an unsuccessful demand of justice. Nothing can better illustrate the unreasonable tendency of the principle.

Treaties of peace are also excluded, or, at the least, are so narrowed as to be in the greatest number of cases impracticable. The most common conditions of these treaties are restitutions or cessions of territory, on one side or on the other, frequently on both sides—regulations of boundary—restitutions and confirmations of property—pecuniary indemnifications for injuries or expenses. It will, probably, not be easy to find a precedent of a treaty of peace, which does not contain one or more of these pro-

visions, as the basis of the cessation of hostilities, and they are all of them naturally to be looked for in an agreement which is to put an end to the state of war between conflicting nations.

Yet they are all precluded by the objections which have been enumerated: pecuniary indemnifications, by that which respects the appropriations of money; restitutions or cessions of territory or property, regulations of boundary, by that which respects the right of Congress to dispose of, and make all needful rules and regulations concerning the territory and property of the United States. It is to be observed, likewise, that cessions of territory are almost always accompanied with stipulations in favor of those who inhabit the ceded territory, securing personal privileges and private rights of property; neither of which could be acceded to on the principles of that objection, which relates to the power of naturalization; for this power has reference to two species of rights, those of privilege and those of property. An act allowing a foreigner to hold real estate is so far an act of naturalization; since it is one of the consequences of alienism, not to be able to hold real estate.

It follows, that if the objections which are taken to the treaty, on the point of constitutionality, are valid, the President, with the advice and consent of the Senate, can make neither a treaty of commerce nor alliance, and rarely, if at all, a treaty of peace. It is probable, that on a minute analysis, there is scarcely any species of treaty which would not clash, in some particular, with the principle of those

objections; and thus, as was before observed, the power to make treaties, granted in such comprehensive and indefinite terms, and guarded with so much precaution, would become essentially nugatory.

This is so obviously against the principles of sound construction; it, at the same time, exposes the Government to so much impotence in one great branch of political power, in opposition to a main intent of the Constitution; and it tends so directly to frustrate one principal object of the situation of a general government, the convenient management of our external concerns, that it cannot but be rejected by every discerning man who will examine and pronounce with sincerity. It is against the principles of sound construction; because these teach us, that every instrument is so to be interpreted, as that all the parts may, if possible, consist with each other, and have their effect. But the construction which is combated would cause the legislative power to destroy the power of making treaties. Moreover, if the power of the executive department be inadequate to the making of the several kinds of treaties which have been mentioned, there is, then, no power in the Government to make them; for there is not a syllable in the Constitution which authorizes either the legislative or judiciary departments to make a treaty with a foreign nation. And our Constitution would then exhibit the ridiculous spectacle of a government without a power to make treaties with foreign nations; a result as inadmissible as it is absurd; since, in fact, our Constitution grants the power of making treaties, in the most explicit and

ample terms, to the President, with the advice and consent of the Senate. On the contrary, all difficulty is avoided, by distinguishing the province of the two powers, according to ideas which have been always familiar to us, and which were never exposed to any question till the treaty with Great Britain gave exercise to the subtilties of party spirit.

By confining the power to make laws within its proper sphere, and restricting its actions to the establishment of rules for our own nation and those foreigners who come within our jurisdiction, and by assigning to the power of treaty the office of concerting those rules of mutual intercourse and connection, between us and foreign nations, which require their consent as well as our own, allowing to it the latitude necessary for this purpose, a harmonious agreement is preserved between the different powers of the Government—that to make laws, and that to make treaties; between the authority of the legislative and the authority of the executive department. Hence—

Though Congress, by the Constitution, have power to lay taxes, yet a treaty may restrain the exercise of it in particular cases. For a nation, like an individual, may abridge its moral power of action by agreement; and the organ charged with the legislative power of a nation may be restrained in its operation by the agreements of the organ of its *federative* power, or power to contract. Let it be remembered, that the nation is the *constituent*, and that the executive, within its sphere, is no less the organ of its will than the Legislature.

Though Congress are empowered to make regulations of trade, yet they are not exclusively so empowered; but regulations of trade may also be made by treaty, and, where other nations are to be bound by them, must be made by treaty.

Though Congress are authorized to establish a uniform rule of naturalization, yet this contemplates only the ordinary cases of internal administration. In particular and extraordinary cases, those in which the pretensions of a foreign government are to be managed, a treaty may also confer the rights and privileges of citizens; thus the absolute cession and plenary dominion of a province or district possessed by our arms in war may be accepted by the treaty of peace on the condition that its inhabitants shall, in their persons and property, enjoy the privileges of citizens.

The same reasoning applies to all the other instances of supposed infraction of the legislative authority: with regard to piracies and offences against the laws of nations, with regard to expenditures of money, with regard to the appointment of officers, with regard to the judiciary tribunals, with regard to the disposal and regulation of the national territory and property. In all these cases, the power to make laws and the power to make treaties are concurrent and co-ordinate. The latter, and not the former, must act, where the co-operation of other nations is requisite.

As to what respects the commissioners agreed to be appointed, they are not, in a strict sense, *officers*. They are *arbitrators* between the two countries.

Though in the Constitutions, both of the United States and of most of the individual States, a particular mode of appointing officers is designated, yet, in practice, it has not been deemed a violation of the provision to appoint commissioners or special agents for special purposes in a different mode.

As to the provision, which restricts the issuing of money from the treasury to cases of appropriation by law, and which, from its intrinsic nature, may be considered as applicable to the exercise of every power of government, it is, in no sort, touched by the treaty. In the constant practice of the Government, the cause of an expenditure, or the contract which incurs it, is a different thing from the appropriation for satisfying it. Thus the salary of a public officer is fixed by one law, the appropriation for its payment by another. So, the treaty only stipulates what may be a cause of expenditure. An appropriation by law will still be requisite for actual payment.

As to the disposal and regulation of the territory and property of the United States, this will be naturally understood of dispositions and regulations purely domestic, and where the title is not disputed by a foreign power. Where there are interfering claims of foreign powers, as neither will acknowledge the right of the other to decide, treaty must directly or indirectly adjust the dispute.

So far then it is from being true, that the power of treaty can extend to nothing upon which, in relation to ourselves, the legislative power may act, that it may rather be laid down as a general rule, that a treaty may do between different nations whatever

the legislative power of each may do with regard to itself. The exceptions to this rule are to be deduced from the unfitness and inconvenience of its application to particular cases, and are of the nature of abuses of a general principle.

In considering the power of legislation in its relations to the power of treaty, instead of saying that the objects of the former are excepted out of the latter, it will be more correct, indeed it will be entirely correct, to invert the rule, and to say that the power of treaty is the power of making exceptions, in particular cases, to the power of legislation. The stipulations of treaty are, in good faith, restraints upon the exercise of the last-mentioned power. Where there is no treaty, it is completely free to act. Where there is a treaty, it is still free to act in all the cases not specially excepted by the treaty. Thus, Congress are free to regulate trade with a foreign nation, with whom we have no treaty of commerce, in such manner as they judge for the interest of the United States; and they are also free so to regulate it with a foreign nation with whom we have a treaty, in all the points which the treaty does not specially except. There is always, therefore, great latitude for the exercise of the legislative power of regulating trade with foreign nations, notwithstanding any treaties of commerce which may be formed.

The effects of a treaty to impose restraints upon the legislative powers may, in some degree, be exemplified by the case of the compacts which the Legislature itself makes, as with regard to the public debt. Its own compacts are, in good faith, excep-

tions to its power of action. Treaties with foreign powers, for obvious reasons, are much stronger exceptions. CAMILLUS.

NO. XXXVIII—AND LAST

1796.

The manner in which the power of treaty, as it exists in the Constitution, was understood by the convention in framing it, and by the people in adopting it, is the point next to be considered.

As to the sense of the convention, the secrecy with which their deliberations were conducted does not permit any formal proof of the opinions and views which prevailed in digesting the power of treaty. But from the *best opportunity of knowing the fact*, I aver, that it was understood *by all* to be the intent of the provision to give to that power the most ample latitude—to render it competent to all the stipulations which the exigencies of national affairs might require; competent to the making of treaties of alliance, treaties of commerce, treaties of peace, and every other species of convention usual among nations; and competent, in the course of its exercise for these purposes, to control and bind the legislative power of Congress. And it was emphatically for this reason that it was so carefully guarded; the co-operation of two thirds of the Senate, with the President, being required to make any treaty whatever. I appeal for this, with confidence, to every member of the convention—particularly to those in the two houses of Congress. Two of these are in the

House of Representatives, Mr. Madison, and Mr. Baldwin. It is expected by the adversaries of the treaty, that these gentlemen will, in their places, obstruct its execution. However this may be, I feel a confidence that neither of them will deny the assertion I have made. To suppose them capable of such a denial were to suppose them utterly regardless of truth. But though direct proof of the views of the convention on the point cannot be produced, yet we are not wholly without proof on this head.

Three members of the convention dissented from the Constitution: Mr. Mason, Mr. Gerry, and Mr. Randolph. Among the reasons for his dissent, published by Mr. Mason, we find this clause: "By declaring all treaties supreme laws of the land, the Executive and Senate have, *in many cases*, an *exclusive power of legislation*, which might have been avoided by proper distinctions with respect to treaties, and *requiring the assent of the House of Representatives* where it could be done with safety." This shows the great extent of the power, in the conception of Mr. Mason: *in many cases* amounting to an *exclusive power of legislation;* nor did he object to the extent, but only desired that it should have been further guarded, by certain distinctions, and by requiring, in certain cases, the assent of the House of Representatives.

Among the objections to the Constitution, addressed by Mr. Gerry to the Legislature of Massachusetts, we find one to have been, "that treaties of the *highest importance* might be formed by the President, with the advice of two thirds of a *quorum* of

the Senate." This shows his idea of the magnitude of the power; and impliedly admitting with Mr. Mason, the propriety of its extent, he seems only to have desired that the concurrence of the Senate should have embraced two thirds of the *whole body*, instead of two thirds of a *quorum*. But how small and how insignificant would the power of treaty be, according to the doctrine lately promulgated, with regard to its constitutional limit?

As to the sense of the community in the adoption of the Constitution, this can only be ascertained from two sources: the writings for and against it, and the debates in the several State conventions, while it was under consideration.

I possess not, at this moment, materials for an investigation, which would enable me to present the evidence they afford; but I refer to them, with confidence, for proof of the fact, that the organization of the power of treaty in the Constitution was attacked and defended with an admission on both sides, of its being of the character which I have assigned to it. Its great extent and importance—its effect to control, by its stipulations, the legislative authority, were mutually taken for granted, and upon this basis it was insisted, by way of objection, that there were not adequate guards for the safe exercise of so vast a power; that there ought to have been reservations of certain rights, a *better* disposition of the power to impeach, and a participation, general or special, of the House of Representatives in the making of treaties.

The reply to these objections, acknowledging the

delicacy and magnitude of the power, was directed to show that its organization was a proper one, and that it was sufficiently guarded.[1]

The manner of exercising a similar power under the *Confederation* shall now be examined.

To judge of the similarity of the power it will be useful to quote the terms in which it was granted. They are these: "The United States in Congress assembled shall have the sole and exclusive right and power of *entering into treaties and alliances*,

[1] *The Federalist*, No. XLII. [No. 42 of *The Federalist* was written by Madison, hence the peculiar aptness of the quotation at this time, when Madison was the leader of the opposition. No. 64 was by Jay. —Ed.], has these passages: "The power to make treaties and to receive and send ambassadors, speak their own propriety; both of them are comprised in the articles of confederation, *with the difference only* that the former is *disembarrassed* by the plan of the convention, of an exception by which treaties might be substantially frustrated by regulations of the States." This plainly alludes to the *proviso* which has been cited and commented upon. "It is true that when treaties of commerce stipulate for the nominal appointment of consuls, the admission of foreign consuls may fall within the power of making commercial treaties." And in number LXIV. are these passages: "The power of making treaties is an important one, especially *as it relates to war, peace, and commerce;* and it should not be delegated but in such a mode and with such precautions as will afford the *highest security*, that it will be exercised by men the best qualified for the purpose, and in the manner most conducive to the public good." "There are few who will not admit, that the affairs of *trade* and *navigation* should be regulated by a system cautiously formed and steadily pursued, and that both our treaties and our laws should correspond with and be made to promote it." "Some are displeased with it (that is, the power of treaty), not on account of any errors or defects in it, but because, as the treaties, when made, are to have the force of laws, they should be made only by men invested with legislative authority; others, though content that treaties should be made in the mode proposed, are averse to their being the *supreme law of the land*."

It is generally understood that two persons were concerned in the writings of these papers, who, from having been members of the convention, had a good opportunity of knowing its views—and were under

provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subject to, or from prohibiting the importation or exportation of any species of commodities whatsoever." (Article IX.)

It will not be disputed that the words "treaties and alliances" are of equivalent import, and of no greater force than the single word "treaties." An

no temptation at that time, in this particular, to misrepresent them. [This is a curious statement, for Jay was not a member of the convention, and *The Federalist* had, of course, three authors. It would seem to imply that Hamilton then (1796) thought himself the author of No. 64. See introduction to *Federalist*, vol. xi.—ED.]

In the *address* and reasons of dissent of the minority of the convention of Pennsylvania to their constituents, they state, that they had suggested the following proposition, among others, for an *amendment* to the Constitution: "That no treaty which shall be directly opposed to the existing laws of the United States in Congress assembled, shall be valid *until* such laws shall be repealed or made conformable to such treaty." This shows that it was understood that the power of treaty in the Constitution extended to abrogating even pre-existing laws of the United States, which was thought exceptionable; while no objection was made to the idea of its controlling future exercises of the legislative power. The same address states, in another place, that the President and Senate "may form treaties with foreign nations, that may control and abrogate the Constitution and laws of the several States."

In the 2d volume of the Debates of the Convention of Virginia, which is the only part I possess, there are many passages that show the great extent of the power of treaty in the opinion of the speakers on both sides. As quotations would be tedious, I will content myself with referring to the papers where they will be found, viz., 91, 99, 131, 137, 143, 147, 150, 186. It will, in particular, appear, that while the opposers of the Constitution denied the power of the House of Representatives to break in upon or control the power of treaties, the friends of the Constitution did not affirm the contrary, but merely contended that the House of Representatives might check by its *influence* the President and Senate—on the subject of treaties.

alliance is only a species of treaty, a particular of a general;—and the power of "entering into treaties," which terms confer the authority under which the former government acted, will not be pretended to be stronger than the power "to make treaties," which are the terms constituting the authority under which the present government acts; it follows, that the power, respecting treaties, under the former, and that under the present government, are similar.

But though similar, that under the present government is more comprehensive; for it is divested of the restriction in the provision cited above, and is fortified by the express declaration, that its acts shall be valid notwithstanding the constitution or laws of any State. This is evidence (as was the fact) of a disposition in the convention to disembarrass and reinforce the power of treaty. It ought not to pass unnoticed, that an important argument results from the *proviso*, which accompanies the power granted by the Confederation as to the natural extent of this power. The declaration that no treaty of commerce shall be made restraining the legislative power of a State from imposing such duties and imposts on foreigners as their own people are subject to, or from prohibiting the importation or exportation of any species of commodities whatsoever, is an admission (1) that the general power of entering into treaties included that of making treaties of commerce, and (2) that without the limitation in the proviso, a treaty of commerce might have been made which would restrain the legislative authority of the State in the points interdicted by that proviso.

Let it not be said, that the proviso, by implication, granted the power to make treaties of commerce, under which Congress afterwards acted; for besides that this is inconsistent with the more obvious meaning of the clause, the first article of the Confederation leaves to the States individually every power not *expressly* delegated to the United States in Congress assembled. The power of Congress, therefore, to make a treaty of commerce, and every other treaty they did make, must be vindicated on the ground that the express grant of power to enter into treaties and alliances is a *general*, which necessarily included as *particulars* the various treaties they have made, and the various stipulations of those treaties.

Under this power, thus granted and defined, the alliance with France was contracted; guaranteeing, in the case of a defensive war, her West India possessions, and when the *casus fœderis* occurs, obliging the United States to make war for the defence of those possessions, and consequently, to incur the expenses of war.

Under the same power, treaties of commerce were made with France, the Netherlands, Sweden, and Prussia. Besides that every treaty of commerce is necessarily a *regulation* of commerce between the parties, it has been shown, in the antecedent comparison of those treaties[1] with that lately negotiated, that they produce the specific effects of

[1] Articles 2d, 3d, and 4th of treaty with France, 2d, 3d, and 20th of treaty with Russia, 2d and 3d of treaty with Holland, 3d and 4th of treaty with Sweden.

restraining the legislative power from imposing higher or other duties on the articles of those nations than on the like articles of other nations, and from extending prohibition to them which shall not equally extend to other nations the most favored; and thus abridge the exercise of the legislative power to tax, and the exercise of the legislative power to regulate trade.

These treaties likewise define and establish the same case of piracy which is defined in the treaty with Great Britain. Moreover, the treaty with France, as has been elsewhere shown, with regard to the rights of property, *naturalizes the whole French nation.*

The consular convention with France, negotiated, likewise, under the same power, grants to the consuls of that country various authorities and jurisdiction, some of a *judicial nature*, which are actual transfers to them of portions of the internal jurisdiction and ordinary judiciary power of the country, the exercise of which our government is bound to aid with its whole strength. It also grants exemptions to French consuls from certain kinds of taxes, and to them, and French citizens, from all personal service; all which are extremely delicate interferences with our internal policy and ordinary jurisdiction.

Under the same power, the treaty with Morocco was formed, which, besides various other regulations relative to war, and several relative to trade, contains the rule, that neither party shall make war without a previous demand of reparation; in restraint

of the general discretionary power of Congress to declare war.

Under the same power, the treaty of peace with Great Britain was made. This treaty contains the establishment of a boundary line between the parties, which, in part, is arbitrary, and could not have been predicated upon precise antecedent right. It also prohibits the future confiscation of the property of adherents to Great Britain; declares that no person shall, on account of the part he took in the war, suffer any future loss or damage in his person, liberty, or property, and provides for the release of such persons from confinement, and the discontinuance of prosecutions against them.

It is difficult to conceive a higher act of control, both of the legislative and judiciary authority, than by this article. These provisions are analogous, in principle, to those stipulations which, in the second and ninth articles of the treaty under examination, have given occasion to constitutional objection.

Under the same power, various treaties with Indians, inhabiting the territory of the United States, have been made, establishing arbitrary lines of boundary with them, which determine the right of soil on the one side and on the other. Some of these treaties proceed on the principle of the United States having conquered the Indian country, and profess to make gratuitous concessions to them of the lands which are left to their occupation. There is also a feature of importance common to these treaties, which is the withdrawing of the protection of the United States from those of their citizens who

intrude on Indian lands, leaving them to be punished at the pleasure of the Indians.

Hence it appears that, except as to the stipulations for appointing commissioners, the treaties made under the Confederation contain all the features, identically or by analogy, which create constitutional objections to the treaty before us: they restrain, in certain instances, the legislative power to lay taxes; they make numerous and important regulations of trade; they confer the benefit of naturalization as to property; they define cases of piracy; they create causes of expenditure; they direct and modify the power of war; they erect, *within the country*, tribunals unknown to our constitutions and laws, in cases to which these are competent—whereas the treaty with Great Britain only provides for the appointment of *arbitrators* in cases to which our tribunals and laws are incompetent; and they make dispositions concerning the territory and property of the United States.

It is true, that some of the treaties made under the former government, though subsequent to the proposing of the articles of confederation to the States, were prior to the final adoption of these articles; but still it is presumable that the treaties were negotiated with an eye to the powers of the *pending* national compact. Those with Great Britain, Sweden, Russia, and Morocco, and the convention with France, were posterior to the completion of that compact.

It may, perhaps, be argued that a more extensive construction of the power of treaty in the Confed-

eration, than in our present Constitution, was countenanced by the union in the same body of legislative powers with the power of treaty. But this argument can have no force, when it is considered that the principal legislative powers, with regard to the objects embraced by the treaties of Congress, were not vested in that body, but remained with the individual States. Such are the power of *specific* taxation, the power of regulating trade, the power of naturalization, etc.

If in theory the objects of legislative power are excepted out of the power of treaty, this must have been equally, at least, the case with the legislative powers of the State governments as with those of the United States. Indeed the argument was much stronger for the objection, where distinct governments were the depository of the legislative power, than where the same government was the depository of that power and of the power of treaty. Nothing but the intrinsic force of the power of treaty could have enabled it to penetrate the separate spheres of the State governments. The practice under the Confederation for so many years, acquiesced in by all the States, is, therefore, a conclusive illustration of the power of treaty, and an irresistible refutation of the novel and preposterous doctrine which impeaches the constitutionality of that lately negotiated. If the natural import of the terms used in the Constitution were less clear and decisive than they are, that practice is a commentary upon them, and fixes their sense. For the sense in which certain terms were practised upon in a prior constitution of

government, must be presumed to have been intended, in using the like terms in a subsequent constitution of government for the same nation.

Accordingly, the practice under the present government, before the late treaty, has corresponded with that sense.

Our treaties with several Indian nations regulate and change the boundaries between them and the United States. And in addition to compensations in gross, they stipulate the payment of certain specific and perpetual annuities. Thus a treaty in August, 1790, with the Creeks (article 5) promises them the yearly sum of one thousand five hundred dollars. And similar features are found in subsequent treaties with the Six Nations, the Cherokees, and the Northwestern Indians. This last has *just* been ratified by the *unanimous voice* of the Senate. It stipulates an annuity of 9,500 dollars, and relinquishes to the Indians a large tract of land which they had, by preceding treaties, ceded to the United States.

Hence we find that our former treaties under the present government, as well as one subsequent to that under consideration, contradict the doctrine set up against its constitutionality, in the important particulars of making dispositions concerning the territory and property of the United States, and binding them to raise and pay money. These treaties have not only been made by the President, and ratified by the Senate, without any impeachment of their constitutionality, but the House of Representatives has heretofore concurred, and without objec-

tion, in carrying them into effect, by the requisite appropriation of money.

The consular convention of France stands in a peculiar predicament. It was negotiated under the former government, and ratified under the present; and so may be regarded as a treaty of both governments, illustrative of the extent of the power of treaty in both. The delicate and even the extraordinary nature of the provisions it contains, have been adverted to. Though all reflecting men have thought ill of the propriety of some of them, as inconveniently breaking in upon our interior administration, legislative, executive, and judiciary, only acquiescing in them from the difficulty of getting rid of stipulations entered into by our public agents under competent powers, yet no question has been heard about their constitutionality. And Congress have, by law, assisted their execution by making our judicial tribunals, and the public force of the country, auxiliary to the decrees of the foreign tribunals which they authorize within our territory.

If it should be said that our Constitution, by making all former treaties and engagements as obligatory upon the United States, under that Constitution, as they were under the Confederation, rendered the ratification of the convention a matter of necessity, the answer is, that either the engagements which it contracted were already conclusive, or they were not; if the former, there was no need of a ratification; if the latter, there was no absolute obligation to it. And, in every supposition, a ratification by the President, with the consent of the Senate, could

have been predicated only upon the power given in the present Constitution in relation to treaties; and to have any validity, must have been within the limit of that power.

But it has been heretofore seen that the inference from this instrument is no less strong, if referred to the power under the Confederation, than if referred to the power under the present Constitution.

How happens it, that all these invasions of the Constitution, if they were such, were never discovered, and that all the departments of the government, and all parties in the public councils, should have co-operated in giving them a sanction? Does it not prove that all were convinced, that the power of treaty applied in our exterior relations to objects which, in the ordinary course of internal administration and in reference to ourselves, were of the cognizance of the legislative power? and particularly that the former was competent to bind the latter in the delicate points of raising and appropriating money? If competent to this, what legislative power can be more sacred, more out of its reach?

Let me now ask (and a very solemn question it is, especially for those who are bound by oath to support the Constitution), has it not been demonstrated that the provisions in the treaty are justified by the true and manifest interpretation of the Constitution—are sanctioned by the practice upon a similar power under the Confederation, and by the practice in other instances under the present government?

If this has been demonstrated, what shall we think of the candor and sincerity of the objections which

have been erected on the basis of a contrary supposition? Do they not unequivocally prove, that the adversaries of the treaty have been resolved to discredit it by every artifice they could invent? That they have not had truth for their guide, and consequently are very unfit guides for the public opinion, very unsafe guardians of the public welfare?

It is really painful and disgusting to observe sophisms so miserable as those which question the constitutionality of the treaty, retailed to an enlightened people, and insisted upon with so much seeming fervency and earnestness. It is impossible not to bestow on sensible men who act this part, the imputation of hypocrisy. The absurdity of the doctrine is too glaring to permit even charity itself to suppose it sincere. If it were possible to imagine that a majority in any branch of our government could betray the Constitution, and trifle with the nation, so far as to adopt and act upon such a doctrine, it would be time to despair of the republic.

There would be no security at home, no respectability abroad. Our constitutional charter would become a dead letter. The organ of our government for foreign affairs would be treated with derision whenever he should hereafter talk of negotiation or treaty. May the great Ruler of nations avert from our country so grievous a calamity!

CAMILLUS.

FOREIGN POLICY

FOREIGN POLICY

HAMILTON TO WASHINGTON

NEW YORK, September 4, 1795.

SIR:—I had the pleasure of receiving, two days ıce, your letter of the 31st ultimo. A great press business, and an indifferent state of health, have t it out of my power sooner to attend to it.

The incidents which have lately occurred have en in every way vexatious and untoward. They ıder indispensable a very serious, though calm d measured, remonstrance from this government, rrying among others this idea, that it is not suffi-ıt that the British Government entertain toward r nation no hostile disposition; 't is essential that ey take adequate measures to prevent those op-essions of our citizens, and of our commerce, by eir officers and courts, of which there are too fre-ent examples, and by which we are exposed to ffer inconveniences too nearly approaching to ose of a state of war. A strong expectation should signified of the punishment of Capt. Holmes, for e attempt to violate an ambassador passing through r territory, and for the hostile and offensive men-es which he has thrown out. The dignity of our untry, and the preservation of the confidence of

the people in the government, require both solemnity and seriousness in these representations.

As to the negotiation for alteration in, and additions to, the treaty, I think it ought to embrace the following objects:

A new modification of the 12th article, so as to extend the tonnage, and restrain the prohibition to export from this country, to articles of the growth or production of the British islands. The more the tonnage is extended the better; but I think ninety tons would work advantageously, if nothing better could be done. I had even rather have the article with seventy, as it stood, than not at all, if the restriction on exportation is placed on the proper footing. Some of our merchants, however, think its value would be questionable at so low a tonnage as seventy. It would be also desirable that the article should enumerate the commodities which may be carried to, and brought from, the British islands. This would render it more precise and more intelligible to all.

Great Britain may have substantial security for the execution of the restriction, if it be stipulated on our side: "That a law shall be passed and continued in force during the continuance of the article, prohibiting the exportation in vessels of the United States, of any of the articles in question, if brought from British islands, on pain of forfeiture of the vessel, for wilful breach of the law; and that the same law shall provide that the regulations contained in our laws respecting drawbacks, shall be applied to all exportations in our vessels of the articles in question,

) ascertain that they were imported into the United tates from other than British islands, and this hether a drawback of duty is required or not by ıe exporter; and shall also provide that all such :ticles exported in our vessels from the United tates, shall be expressed in the clearance, with a ertificate of the collector endorsed, specifying that e has carefully examined, according to the treaty nd to the law, the identity of the articles exported, nd that it did *bona fide* appear to him that they had ot been imported from any British island or isl-nds." This security is the greatest difficulty in ıe case, and would, in my opinion, be given by a rovision similar to the foregoing.

It would be a very valuable alteration in the 13th rticle, if a *right could be stipulated* for the United tates to go with articles taken in the British terri-ories in India to other parts of Asia. The object of he present restriction upon us to bring them to ımerica was, I believe, to prevent our interference ith the British East India Company in the Euro-ean trade in India goods. If so, there could be no bjection to our having a right to carry commodities rom the British territories to other parts of Asia. ut if all this latitude cannot be obtained, it would e a great point gained to have a right to carry them hence to China. It is a usual and beneficial course f the trade to go from the United States to *Bombay*, nd take in there a freight for *Canton*, purchase at the ast place a cargo of teas, etc.

It would be well if that part of the 15th article, hich speaks of *countervailing* duties, could be so

explained as to fix its sense. I am of opinion that its only practicable construction is, and ought to be, that they may lay on the *exportation* from their *European dominions*, in vessels of the United States, the *same additional* duty on articles which we lay on the *importation* of the *same articles* into the United States in *British vessels*. But the terms of the clause are vague and general, and may give occasion to set up constructions injurious and contentious.

As to the more exact equalization of duties, of which this article speaks, it is a ticklish subject, and had better, I think, be left alone.

It would be right that it should be expressly agreed that wherever our vessels pay, in the ports of Great Britain, higher charges than their own vessels, a proportional reduction shall be made out of any duty of tonnage which may be laid on our vessels to counteract the difference of tonnage on theirs in our ports.

The 18th article is really an unpleasant one, and, though there is, I fear, little chance of altering it for the better, it may be necessary, for the justification of the President, to attempt it. The standard to be approached by us as nearly as possible is that in our treaty with France. As to the point of free ships making free goods, though it be desirable to us to establish it if practicable—and it ought to be aimed at—yet I neither expect that it will be done at present, nor that the *great maritime powers* will be disposed to suffer it to become an established rule, and I verily believe that it will be very liable, though stipulated, to be disregarded, as it has been by

France through the greater part of the present war. But naval stores and provisions ought, if possible, to be expressly excluded from the list of contraband, except when going to a blockaded or besieged port, town, or fortress, or to a fleet or army engaged in a military operation, for I can imagine no other cases in which there is a just pretence to make *provisions* contraband.

Some provision for the protection of our seamen is infinitely desirable. At least Great Britain ought to agree that no seaman shall be impressed out of any of our vessels at sea, and that none shall be taken out of such vessel in any of her colonies which were in the vessel *at the time of her arrival* at such colony. This provision ought to be pressed with energy as one unexceptionably just, and at the same time safe for Great Britain.

The affair of the negroes, to give satisfaction, may be retouched, but with caution and delicacy. The resolution proposed in the Senate will afford a good standard for this.

As to the crowd of loose suggestions respecting the treaty, which have no reasonable foundation, it would not consist with the reputation of the government to move concerning them. Only reasonable things merit or can, with propriety, have attention.

I beg, sir, that you will at no time have any scruples about commanding me. I shall always with pleasure comply with your commands. I wish my health, or the time for it, would permit me now to be more correct. The other part of your letter shall be carefully attended to in time.

FRANCE [1]

1796.

There are circumstances which render it too probable that a very delicate state of things is approaching between the United States and France. When threatened with foreign danger, from whatever quarter, it is highly necessary that we should be united at home; and considering our partiality hitherto for France, it is necessary towards this union, that we should understand what has really been the conduct of that country toward us. It is time for plain truths, which can only be unacceptable to the hirelings or dupes of that nation.

France, in our revolution war, took part with us. At first she afforded us secret and rather scanty succor, which wore more the complexion of a disposition to nourish a temporary disturbance in the dominions of a rival power, than of an intention to second a revolution.

The capture of Burgoyne and his army decided the till then hesitating councils of France; produced the acknowledgment of our independence, and treaties of commerce and defensive alliance. These again produced the war which ensued between France and Great Britain.

The co-operation and succor of France after this

[1] In 1796 the canvass for the Presidency was proceeding with great violence, and M. Adet, the French minister, was making every effort to bully our government into aiding France, and doing all in his power to help the opposition. Under these circumstances Hamilton felt it to be essential to expose the real attitude and conduct of the French, and destroy so far as possible the dangerous sentiment of unreasonable affection and gratitude toward our former allies. He therefore published the essay entitled *France*.

eriod were efficient and liberal. They were ex-remely useful to our cause, and no doubt con-ributed materially to its success.

The primary motive of France for the assistance ne gave us, was obviously to enfeeble a hated and owerful rival, by breaking in pieces the British mpire. A secondary motive was to extend her lations of commerce in the New World, and to cquire additional security for her possessions there, y forming a connection with this country when etached from Great Britain. To ascribe to her any ther motives—to suppose that she was actuated by riendship towards us, or by a regard for our par-icular advantage, is to be ignorant of the springs of ction which invariably regulate the cabinets of princes. He must be a fool, who can be credulous enough to believe, that a despotic court aided a popular revolution, from regard to liberty or friend-ship to the principles of such a revolution. In forming the conditions upon which France lent her aid, she was too politic to attempt to take any un-worthy advantage of our situation. But they are much mistaken who imagine that she did not take care to make a good bargain for herself. Without granting to us any material privilege in any of her external possessions, she secured in perpetuity a right to participate in our trade, on the foot of the most favored nation. But what is far more import-ant, she, in return for the guaranty of our sover-eignty and independence, obtained our guaranty of her West India possessions in every future *defensive* war. This may appear at first sight a mutual and

equal advantage, but in its permanent operation it is not so. The guaranty of our sovereignty and independence, which is never likely to be again drawn into question, must hereafter be essentially nominal; while our guaranty of the West India possessions must grow into a solid advantage, increasing in importance as we advance in strength, and exposing us often to the chances of being engaged in wars, in which we may have no direct interest. However this guaranty may be regarded as nominal on our part, in this very early stage of our national power, it cannot be so in time to come. We shall be able to afford it with effect, and our faith will oblige us to do so.

But whatever were the motives of France, and though the conditions of the alliance may be in their permanent tendency more beneficial to her than to us, it was our duty to be faithful to the engagements which we contracted with her, and it even became us, without scanning too rigidly those motives, to yield ourselves to the impulses of kind and cordial sentiments towards a power by which we were succored in so perilous a crisis.

Nor should we ever lightly depart from the line of conduct which these principles dictate. But they ought not to be carried so far as to occasion us to shut our eyes against the just causes of complaint which France has given or may hereafter give us. They ought not to blind us to the real nature of any instances of an unfair and unfriendly policy which we have experienced or may hereafter experience from that country. Let us cherish faith, justice,

and, as far as possible, good will, but let us not be dupes.

It is certain that in the progress and towards the close of our revolution war, the views of France, in several important particulars, did not accord with our interests. She manifestly favored and intrigued to effect the sacrifice of our pretensions on the Mississippi to Spain; she looked coldly upon our claim to the privileges we enjoy in the cod fisheries; and she patronized our negotiation with Great Britain without the previous *acknowledgment of our independence;*—a conduct which, whatever color of moderation may be attempted to be given to it, can only be rationally explained into the desire of leaving us in such a state of *half peace, half hostility with Great Britain, as would necessarily render us dependent upon France.*

Since the peace every careful observer has been convinced that the policy of the French Government has been adverse to our acquiring internally *the consistency of which we were capable*—in other words, a well-constituted and efficient government. Her agents everywhere supported, and with too little reserve, that feeble and anarchical system—the old Confederation,—which had brought us almost to the last stage of national *nothingness*, and which remained the theme of their eulogies, when every enlightened and virtuous man of this country perceived and acknowledged its radical defects and the necessity of essential alterations.

The truth of all this, of which no vigilant and unbiassed friend to his country had before the least

doubt, has been fully confirmed to us by the present government of France, which has formally proclaimed to us and to the whole world the *Machiavellian* conduct of the old governments toward this country; nor can we suspect the promulgation to have been the effect of the enmity of the *new* against the *old* government, for our records and our own observations assure us that there is no misrepresentation.

This disclosure, which has not sufficiently attracted the attention of the American people, is very serious and instructive. Surely it ought to put us upon our guard—to convince us that it is at least possible the succeeding rulers of France may have been on some occasions tinctured with a similar spirit. They ought to remember that the magnanimity and kindness of France and the former government were as much trumpeted by its partisans among us as are now the magnanimity and kindness of the present government. What say facts?

Genet was the first minister sent by the new government to this country. Are there no marks of a crooked policy in his *behavior*, or in his instructions? Did he say to us, or was he instructed to say to us, with frankness and fair-dealing: "Americans, France wishes your co-operation; she thinks you bound by your treaty—or by gratitude—or by affinity of principles, to afford it"? Not a word of all this. The language was: "France does not require your assistance; she wishes you to pursue what you think your interest."

What was the conduct? Genet came out with his pocket full of commissions to arm privateers. Arrived at Charleston, before he had an opportunity of sounding our government, he begins to issue them, and to fit privateers from our ports. Certain that this was a practice never to be tolerated by the enemies of France, and that it would infallibly implicate us in the war, our government mildly signifies to him its disapprobation of the measure. He affects to acquiesce, but still goes on in the same way—very soon in open defiance of the government; between which and our own citizens he presently endeavors to introduce jealousy and schism. He sets on foot intrigues with our southern and western extremes, and attempts to organize our territory, and to carry on from it military expeditions against the territories of Spain in our neighborhood—a nation with which we were at peace.

It is impossible to doubt that the end of all this was to drag us into the war, with the humiliation of being plunged into it without ever being consulted, and without any volition of our own.

No government or people could have been more horridly treated than we were by this foreign agent. Our Executive, nevertheless, from the strong desire of maintaining good understanding with France, forbore to impute to the French Government the conduct of its agent; made the matter personal with him, and requested his recall. The French Government could not refuse our request without a rupture with us, which at that time would have been extremely inconvenient for many plain reasons. The application

for the recall accordingly had full success; and the more readily as it arrived shortly after the overthrow of the Girondist party (to which *Genet* belonged), and thus afforded another opportunity of exercising vengeance on that devoted party.

But it were to be very credulous to be persuaded that *Genet* acted in this extraordinary manner, from the very beginning, without the authority of the government by which he was sent; and did not the nature of his conduct contain an internal evidence of the source, it could be easily traced in the instructions which he published. These instructions demonstrate three things, though the last is couched in very covert terms: 1. That France did not consider us as bound to aid her in the war. 2. That she desired to engage us in it, and the principal bribe was to be large privileges in her West India trade. 3. That if direct negotiation did not succeed, indirect means were to be taken to entangle us in it whether so disposed or not. It is not matter of complaint, that France should endeavor to engage by fair means our assistance in the war, if she thought it would be useful to her, but it is just matter of bitter complaint, that she should attempt against our will to ensnare or drive us into it.

Fauchet succeeded Genet. It was a *meteor* following a *comet*. No very marked *phenomena* distinguish his course. But the little twinkling appearances which here and there are discernible, indicate the same general policy in him which governed his predecessor. The Executive of our country, in consequence of an insurrection, to which one of them had

materially contributed, had publicly arraigned political clubs. *Fauchet*, in opposition, openly patronizes them. At the festivals of these clubs he is always a guest, swallowing toasts full of sedition and hostility to the government. Without examining what is the real tendency of these clubs, without examining even the policy of what is called the President's denunciation of them, it was enough for a foreign minister that the Chief Magistrate of our country had declared them to be occasions of calamity to it. It was neither friendly nor decent in a foreign minister after this to countenance these institutions. This conduct discovered towards us not only unkindness but contempt. There is the more point in it, as this countenance continued after similar societies had been proscribed in France;—what were destructive poisons there, were in this country salutary medicines. But the hostility of the views of this minister is palpable in that intercepted letter of his, which unveils the treachery of Randolph. We there learn, that he pretended to think it was a duty of patriotism to second the Western insurrection; that he knew and approved of a conspiracy which was destined to overthrow the administration of our government, even by the most irregular means.

Another revolution of party in *France* placed *Mr. Adet* in the room of *Mr. Fauchet*. *Mr. Adet* has been more circumspect than either of his predecessors; and perhaps we ought scarcely to impute it to him as matter of reproach that he openly seconded the opposition in Congress to the treaty concluded with *Great Britain*. This was a measure of a nature to

call forth the manœuvres of diplomatic tactics. But if we are wise, we shall endeavor to estimate rightly the probable motives of whatever displeasure France or her agents may have shown at this measure. Can it be any thing else than a part of the same plan which induced the minister of *Louis XVI.* to advise us to treat with Great Britain without the previous acknowledgment of our independence? Can it be any thing else than a part of that policy which deems it useful to France, that there should perpetually exist between us and Great Britain germs of discord and quarrel? Is it not manifest that in the eyes of France the unpardonable sin of that treaty is, that it roots up for the present those germs of discord and quarrel? To pretend that the treaty interferes with our engagements with France, is a ridiculous absurdity—for it expressly excepts them. To say that it establishes a course of things hurtful to France in her present struggle, is belied by the very course of things since the treaty—all goes on exactly as it did before.

Those who can justify displeasure in France on this account, are not *Americans*, but *Frenchmen*. They are not fit for being members of an independent nation, but are prepared for the dependent state of colonists. If our government could not without the permission of France terminate its controversies with another foreign power, and settle with it a treaty of commerce, to endure three or four years, our boasted independence is a name. We have only transferred our allegiance! we are slaves!

THE ANSWER [1]

(From the *Minerva*.)

December 6, 1796.

The French Republic have, at various times during the present war, complained of certain principles and decisions of the American Government, as being violations of its neutrality, or infractions of the treaty made with France in the year 1778. These complaints were principally made in the year 1793, and explanations, which till now were deemed satisfactory, were made by Mr. Jefferson's correspondence, in August of that year. They are now not only renewed with great exaggeration, but the French Government have directed that it should be done *in the tone of reproach, instead of the language of friendship*. The apparent intention of this menacing tone, at this particular time, is to influence timid minds to vote agreeably to their wishes in the election of President and Vice-President, and probably with this view the memorial was published in the newspapers. This is certainly a practice that must not be permitted. If one foreign minister is permitted to publish what he pleases to the people, in the name of his government, every other foreign minister must be indulged with the same right. What then will be our situation on the election of a President and Vice-President, when the government is insulted, the persons who administer it traduced, and the election

[1] From Adet's offensive note announcing the decree of the French Government against neutrals, a sharp correspondence had sprung up with Pickering, our Secretary of State. Just after Congress assembled Hamilton replied to Adet in *The Answer*, under his old signature of "Americanus."

menaced by public addresses from these intriguing agents? Poland, that was once a respectable and powerful nation, but is now a nation no longer, is a melancholy example of the dangers of foreign influence in the election of a chief magistrate. Eleven millions of people have lost their independence from that cause alone. What would have been the conduct of the French Directory, if the American minister had published an elaborate and inflammatory address to the people of France against the government, reprobating the conduct of those in power, and extolling that of the party opposed to them? They would have done as the Parliament of England did in 1727, when the emperor's Resident presented an insolent memorial to the king, and published it next day in the newspapers. All parties concurred in expressing the highest indignation and resentment at the affront offered to the government by the memorial delivered by Monsieur Palm, and more particularly at his audacious manner of appealing from the government to the people, under the pretext of applying for reparation and redress of supposed injuries. In consequence of an address from both houses, Monsieur Palm was ordered to quit England immediately. And is it not necessary that we should adopt some remedy adequate to this evil to avoid those serious consequences which may otherwise be apprehended from it?

The conduct of the American Government to preserve its neutrality has been repeatedly justified by arguments drawn from the law of nations, and in the application of its principles they have gone as far, in

every instance, and in one particular instance farther, in favor of France, than the strict rule of neutrality would justify. It would, therefore, answer no valuable purpose to state the same principles, and deduce the same consequences, in order to justify ourselves on the same ground, that we have already done; but as the *reproaches* of the French Republic are founded on an idea that our construction and application of the law of nations is erroneous, partial, and inimical, it may be worth while to examine whether we cannot justify ourselves by the example of the French nation itself. I presume a better rule of justification against any charge cannot be required, than the conduct of those who have made it in like cases.

I propose, therefore, to compare the decisions of the American Government, in the several points wherein they have been complained of in Mr. Adet's memorial, with the laws of France on the same points.

It is asserted that the American Government has violated the 17th article of the treaty of 1778, by arresting French privateers and their prizes; and that it has exercised *shocking persecutions* toward them.

It will be found, on an accurate inquiry, that all the prizes brought in under French commissions, that have been restored, have been found to be in one or the other of the following descriptions:

1. Those captured within a marine league of the shores of the United States.

2. When the capturing vessel was owned and principally manned by American citizens.

3. When the capturing vessel was armed in our ports.

As to the jurisdiction exercised by the United States over the sea contiguous to its shores, all nations claim and exercise such a jurisdiction, and all writers admit this claim to be well founded: and they have differed in opinion only as to the distance to which it may extend. Let us see whether France has claimed a greater or less extent of dominion over the sea than the United States. Valin, the king's advocate at Rochelle, in his new commentary on the marine laws of France, published first in 1761, and again by approbation in 1776,[1] after mentioning the opinions of many different writers on public law on this subject, says: "As far as the distance of two leagues the sea is the dominion of the sovereign of the neighboring coast; and that whether there be soundings there or not. It is proper to observe this method in favor of states whose coasts are so high that there are no soundings close to the shore, but this does not prevent the extension of the dominion of the sea, *as well in respect to jurisdiction as to fisheries*, to a greater distance by particular treaties, or the rule herein before mentioned, which extends dominion as far as there are soundings, or as far as the reach of a cannon shot; *which is the rule at present universally acknowledged.*" "The effect of this dominion," the same author says, "according to the principles of Puffendorf, which are incontestable, is, that every sovereign has a right to protect foreign commerce, in his dominions, as well as to secure it

[1] Book V., title 1.

from insult, by preventing others from approaching nearer than a certain distance." In extending our dominion over the sea to one league, we have not extended it so far as the example of France and the other powers of Europe would have justified. They, therefore, can have no right to complain of our conduct in this respect.

The second description of cases which has induced the American Government to restore prizes claimed by the French, is when our citizens have made the capture under a French commission.

The third article of the ordinances of the marine of France, which the commission now given to French privateers requires to be observed (Valin, vol. 2, 235), is as follows: "We prohibit all our subjects from taking commissions from foreign kings, princes, or states, to arm vessels for war, and to cruise at sea under their colors, unless by our permission, on pain of being treated as pirates." The commentator says these general and indefinite prohibitions have no exception. They extend to commissions taken from friends or allies, as well as neutrals, and those that are equivocal, and they were considered as necessary consequences of the laws of neutrality.

"If," says Valin, "the commission of the foreign prince be to cruise against *his enemies* who are *our allies, or those with whom we intend to preserve neutrality*, it would afford just ground of complaint on their part, and might lead to a rupture." The rule extends as well to subjects domiciliated as not domiciliated in the kingdom, and foreign countries; "for Frenchmen are not the less Frenchmen, for

having gone to live in foreign countries." If France may rightfully prohibit her citizens from accepting foreign commissions to make prize of the property of her friends, why should the United States be *reproached* for exercising a similar right? A necessary consequence of this wise and just prohibition is, that all prizes taken contrary to it should be restored with damages to the party injured.

The third description of prizes restored, is where they have been fitted and armed in the ports of the United States.

I find no direct, positive provision by the marine laws of France, prohibiting this; but the whole tenor of those laws supposes that vessels of war are armed in the ports of the sovereign who gives the commission. French privateers must not only fit out in a French port, but are bound to bring all prizes made by them into some particular port or ports expressed in their commissions (Valin, vol. 2, 276). And it is certain that the king of France, previous to his alliance with the United States, delivered up some American prizes to the English, because the capturing vessel had been armed in a French port.

Mr. Adet's memorial charges that the English have been permitted to arm their vessels and bring their prizes into our ports. As to this charge, the fact is simply denied. In the cases mentioned, the vessels said to have taken in guns for their defence, were gone before he made his representation; yet he complained, and the government did nothing. I ask what could they have done? Mr. Adet will answer: They might have declared war against Great Britain;

nd it is certain this was the only remedy that re-nained in such a case; but neither our interest nor ur duty would have permitted us to have adopted it. Our interest did not permit us to give up our neu-rality and engage in a foreign war, the event of vhich would have produced many and certain evils, nd could not by any possibility have produced any ood; and it was contrary to every principle by vhich a just nation would desire to act, to have made var on a whole people because one or two of them ad clandestinely taken arms on board for their de-ence, in one of our ports, without the knowledge of heir government or of ours.

The memorial complains that we have infringed he 17th article of the treaty of 1778, by restraining he prohibition therein contained only to the ships of var and privateers of their enemies, who should come nto our ports *with their prizes*.

The literal sense of the 17th article is, that no rmed ship, *who shall have made* prizes from the rench people, shall receive an asylum in our ports. he 22d article says that no privateer, fitted under . commission of the enemy of either, shall have sylum in the ports of the others. Neither of these rticles says any thing of prizes. The literal appli-ation of them therefore would exclude the capturing essels, but give admission to their prizes; which vould never have been the intention of the parties. he laws of nations, expressly adopted by France, elative to the right of asylum, may illustrate these rticles of the treaty. Ord. Louis XIV., Art. XIV., leclares "that no prizes made by captains under a

foreign commission shall remain in our ports longer than twenty-four hours, unless detained by bad weather, or unless the prize have been made from our enemies." But this article, says Valin, is only applicable to prizes carried into a neutral port, "and not at all to armed vessels, whether neutral or allies, who have taken refuge there, *without prizes*, either to escape the pursuit of enemies, or for any other cause. They may in this case remain as long as they please." By the law of neutrality, simply, French prizes could only have remained twenty-four hours in our ports, but by the treaty they have obtained the privilege of remaining as long as they please. This privilege has not only been allowed them in its fullest extent, but we had gone a step further, and as a favor permitted them to sell their prizes, which neither the treaty nor the law of nations required; and which was of more importance than all the rest put together. This favor, as favors generally are, is now claimed as a right, and the withholding is considered as an injury. Let us see what the ordinances of the French marine have said on this point. Ord. Louis XIV., Tit. Prizes, Art. XIV.: "If in the prizes brought into our ports by vessels armed under a foreign commission, there be any merchandises belonging to our subjects, *or allies*, those belonging to our subjects shall be restored, *and the rest shall not be put into any storehouses, or be purchased by any person under any pretext whatsoever.*" "And all this," says Valin, "is founded on the law of neutrality." By the Treaty of Utrecht, Louis XIV., and his grandson the king of Spain, agreed mutually to permit the prizes

made by one to be brought in *and sold* in the ports of the other. But this, the same author says, was only a particular arrangement, so much the less to be proposed for a general rule, as the two nations had given up the duties on the prize goods sold in their dominions, which however did not last long, on account of the abuses to which it gave rise. Abuses similar, I presume, to those to which the same permission gave rise in this country. The next ground of complaint is the British treaty and its consequences. This treaty is said to deprive France of all the advantages stipulated in a preceding treaty, and this is done by an abandonment of the modern law of nations.

If we may credit the declaration of the king of France, there were no exclusive advantages stipulated for France in that treaty. His ambassador delivered a paper to the British court, dated the 13th of March, 1778, wherein, after announcing the treaty between France and the United States, he says: "His Majesty declares at the same time, that the contracting parties have paid great attention *not to stipulate any exclusive advantages in favor of the French nation; and that the United States have reserved the liberty of treating with every other nation whatever, upon the same footing of equality and reciprocity.*"

The injury supposed to have resulted from an abandonment of the modern public law, assumes two propositions, neither of which is true: 1st. That neutral ships make neutral property. 2d. That materials for building ships are not among the articles considered as contraband of war. By the marine

laws of France, Reg. Dec. 1744, Art. 5, it is directed, that "if there are found on board of neutral vessels, of whatever nation they may be, merchandises or effects belonging to the enemies of his Majesty, they shall be good prize, even though they are not of the growth or manufacture of the enemy's country, but the vessels shall be released." Previous to this regulation, and contrary to the law of nations, as Valin acknowledges, if either the ship or the cargo, or any part of it, was enemy's property, the whole was confiscated by the laws of France. And at this day neutral property on board of an enemy's ships is, by the same laws, liable to confiscation.

As to the contraband of war, timber is enumerated among the articles that are so, by Vatel, Lib. iii., chap. vii.; but Valin is much more particular, vol. 2, 264: "In the treaty of commerce concluded with the king of Denmark, the 23d of August, 1724, pitch and tar were declared contraband, *as also rosin, sail-cloth, hemp, cordage, mats and timber, for the building of ships*. There would have been, therefore, no reason to complain of the conduct of the English, if they had not violated particular treaties; *for of right (de droit) these things are contraband at present, and have been so since the beginning of this century, which was not the case formerly.*" By the modern law of nations, expressly adopted by France, enemies' property, on board neutral ships, is good prize; and by the same law, the number of contraband articles has been increased so as to include the materials for ship-building. All the situations were probably foreseen, in which the treaty might operate favorably or unfa-

rorably for France at the time it was made. It might ıave been stipulated that materials for ship-building hould be deemed contraband, instead of declaring hat they should not; or, that the United States hould not enter into any treaty in which they should e made so. Neither of these being the case, there s no ground of complaint, except *that the consequence s inconvenient*, at present, to France, and the belli-erent powers allied to her. If timber and naval tores are contraband by the law of nations, to de-lare them to be so by a treaty cannot be considered s a privilege granted to one nation, or an injury to ny other. The French nation will not persist in sserting, that because the exercise of rights which he has claimed as legitimate on former occasions, ecomes inconvenient when exercised by others, she nay therefore refuse to acknowledge and respect hem. This would be the language of a haughty lespot in a conquered country, not of justice, honor, nd good faith from one friend to another.

It is said that the 18th article of the treaty with ɔreat Britain suspends all the commercial relations ɔetween the United States and France, by preventing he supplies looked for by France from this country.

This article has not introduced any new case, in vhich provisions may be contraband. It only alters he consequence resulting from a seizure of them, vhen they are so. Valin (vol. 2, 264) says: "By our aw and the law of nations, provisions are not pro-ıibited, *except to places besieged or blockaded.*" The ırticle complained of says explicitly, that when pro-risions and other articles *not generally contraband* are

become so, *according to the existing law of nations*, and shall, *for that reason*, be seized, they shall not be confiscated, but the owner shall be completely indemnified, and receive besides a reasonable mercantile profit. This principle operated as an encouragement for American vessels to seek the French markets, by insuring them against loss, if they happened in any instance to be interrupted in the voyage. France, I presume, might consider our vessels bound with provisions to a place besieged or blockaded liable to seizure, after due notice of the fact. If, instead of this, they contend for the privilege of paying for them according to the terms of the treaty with Great Britain, I suppose it will not be denied to them. But if, under pretence that a vessel is bound to a besieged or blockaded port, when she is not, either France or Great Britain should seize or detain her, it is an injury not authorized by the treaty or the law of nations. This is what both nations have done, when their interests or necessities required it—sometimes with, and often without any apology; and what they will often continue to do, I fear, as long as they know we cannot punish them for it.

These injuries are said to have been received, while every other object around reminds us of the tyranny of Britain and the generous assistance of France during the American war.

The generosity of France and the gratitude of the United States have been often suggested by some of our own citizens, and we are now *reproached* with it by France herself. Gratitude is due for favors received; and this virtue may exist among nations as

well as among individuals; but the motive of the benefit must be solely the advantage of the party on whom it was conferred, else it ceases to be a favor. There is positive proof that France did not enter into the alliance with us in 1778 *for our advantage*, but for her own. The whole course of the investigation, as well as a positive knowledge of the fact, proves this. She resisted all of our solicitations for effectual assistance for war three years; and rose in her demand during the campaign of 1777, when our affairs presented the most threatening aspect. Memorials were presented in August and September of that year, while General Burgoyne's army arrived in December; fearing we might be able to do the business without them, the French court began to change its tone. In January the British minister gave notice in the House of Commons that he meant to propose terms of accommodation with America. The French ministry, on the arrival of this intelligence in France, immediately pressed the conclusion of the treaty which they had resisted for three years, and proposed terms much more favorable for us than those our commissioner had offered, and they had refused three months before. The treaty was signed on the 8th of February. I perceive no generosity in all this. They did then as we have done now, and as every discerning nation will do—they regarded only their own interest and advantage, and not that of any other nation. In the interval between the declaration of independence and the alliance with France, that court sometimes ordered away our privateers, and sometimes restored their prizes. They refused

to receive an ambassador or acknowledge our independence; all of which was for fear of bringing France prematurely into the war. The fact is, that the French spoke of very different terms, as the condition of their assistance, before the capture of Burgoyne, from those actually agreed on afterwards. There can be no doubt that our success on that occasion, and the disposition it appeared to have produced in the British ministry, were the immediate causes of that alliance. It was certainly the interest of the French to unite with America in the war against Great Britain. They therefore acted right in doing this at last, though with too much refinement in putting it off so long, but it is not the interest of the United States to be engaged in any war whatsoever—much less do they desire to imbrue their hands in the blood of one nation to gratify the hatred or serve the interest of another. We have acted right hitherto in laying it down as a principle, not to suffer ourselves to be drawn into the wars of Europe; and if we must have a war, I hope it will be for refusing to depart from that principle.

Our government has acted with firmness, consistency, and moderation, in repelling the unjust pretensions of the belligerent powers, as far as reason and argument could have weight. If it has not attempted in every instance to preserve our rights by force, wherein the remedy would have been worse than the disease, they have not yielded them by concession, in any instance. Into whatsoever hands the administration of the government may now come, they are called on by the suggestions of a wise policy,

he voice of their country, to pursue the same genine of conduct that has been hitherto pursued, ut yielding to the violence of party on either They will then be sure of the approbation and rt of the most virtuous, which it is to be hoped ie most numerous of all parties. On the con- if, departing from these principles, they unsarily involve their country in the horrors of they will meet the merited execration of good and in the end the punishment justly due to conduct from an injured people.

AMERICANUS.

THE WARNING [1]

I

January 27, 1797.

re are appearances too strong not to excite hension that the affairs of this country are ng fast to an eventful crisis. Various circumes, daily unfolding themselves, authorize a conn that France has adopted a system of conduct d the neutral maritime nations generally, which nts to little less than actual hostility. I mean tal interruption of their trade with the ports of iemies; a pretension so violent, and at the same so oppressive, humiliating, and ruinous to them,

[1] *Warning* was in continuation of the line of argument pursued *ce*. Its purpose was to arouse the people against French inflund to show that we ought to be independent of all foreigners, ; allow ourselves to be dragged by France into a war with Engut rather be prepared to withstand the more dangerous enents of the "Great Republic itself."

that they cannot submit to it, without not only the complete sacrifice of their commerce, but their absolute degradation from the rank of sovereign and independent states.

It seems to have become latterly a primary object in the policy of France to make the principal attack upon Great Britain through her commerce, in order, by extinguishing the sources of her revenue and credit, to disable her from continuing the war, and compel her to accept any conditions of peace which her antagonist may think fit to prescribe. It is to this plan we are to attribute the unjustifiable treatment of Tuscany, in the seizure of Leghorn, and shutting her ports against the English, contrary to the will of her own government. The same plan has dictated the attempts which are understood to have been made to oblige Naples to exclude Great Britain from her ports during the present war. And there have been indications of a design to effect a similar restraint on all the Italian states, and expel the British trade wholly from the Mediterranean. The same object of wounding Great Britain through her commerce, has been promoted by the war into which Spain has been drawn, and may be considered as the principal advantage expected from it; while it is likewise alleged to be the intention to force Portugal to suspend her commercial relations with Great Britain. The late decree forbidding the importation of British manufactures into France, is a further proof of the eagerness with which the policy of destroying the British commerce is pursued; since it is presumable, from the derangement of French manufactures by

the war, that there must have been a convenience in the supply which that importation has afforded.

It is obviously to the same origin that we are to trace the decree lately communicated by the French minister to our government, with respect to the intended treatment of the trade of neutrals, and the spoliations which ours has for a long time past suffered. While neutral nations were permitted to enjoy securely their rights, besides the direct commerce between them and the British dominions, the commerce of Great Britain would be carried on in neutral bottoms, even with the countries where it was denied access in British bottoms. It follows, that the abridgment of neutral rights is essential to the scheme of destroying the British commerce. And here we find the true solution of those unfriendly proceedings, on the part of France toward this country, which are hypocritically charged to the account of the treaty with Great Britain, and other acts of pretended infidelity in our government.

Did we need a confirmation of this truth, we should find it in the intelligence lately received from Cadiz. We are informed, through a respectable channel,[1] that *Danish* and *Swedish*, as well as *American* vessels, carried into that port by French cruisers, have, with their cargoes, been condemned and confiscated by the French consul or tribunal there, on the declared principle of intercepting the trade of neutrals with the ports of the enemies of France. This

[1] Mr. Ignardi, our consul at Cadiz, lately arrived, who mentioned the fact as here stated, adding, without reserve, that the principle above mentioned is avowed in the correspondence of the French consul at Cadiz.

indiscriminate spoliation of the commerce of neutral powers is a clear proof that France is actuated, not by particular causes of discontent given by our government, but by a general plan of policy.

The practice upon the decree is a comment much broader than the text. The decree purports that France would observe toward neutrals the same conduct which they permitted her enemies to observe toward them. But the practice goes a great deal further. None of the enemies of France, even at the height of their power and presumption, ever pretended totally to cut off the trade of neutrals with her ports. This is a pretension reserved for her, to increase the catalogue of extraordinary examples, of which her revolution has been so fruitful.

The allegations of discontent with this country are evidently a mere coloring to the intended violation of its rights, by treaty as well as by the laws of nations. Some pretext was necessary, and this has been seized. It will probably appear hereafter that *Denmark* and *Sweden* have been mocked with a similar tale of grievances. It is, indeed, already understood that Sweden, outraged in the person of her representative, has been obliged to go the length of withdrawing her minister from Paris.

The complaints of France may be regarded principally as weapons furnished to her adherents to defend her cause, notwithstanding the blows she inflicts. Her aim has been, in every instance, to seduce the people from their government, and, by dividing, to conquer and oppress. Hitherto, happily, the potent spells of this political sorcery have, in most

countries, been counteracted and dissipated by the sacred flame of patriotism. One melancholy exception serves as a warning to the rest of mankind to shun the fatal snare. It is, nevertheless, humiliating, that there are men among us depraved enough to make use of the arms she has furnished in her service, and to vindicate her aggressions as the effect of a just resentment, provoked by the ill conduct of our government. But the artifice will not succeed. The eyes of the people of this country are, every day, more and more opened to the true character of the politics of France; and the period is fast approaching when it will be seen in all its intrinsic deformity.

The desire of a power at war to destroy the commerce of its enemy, is a natural effect of the state of war, and while exercised within bounds, consistent with the rights of nations who are not engaged in the contest, is entirely justifiable; but when it manifestly overleaps these bounds, and indulges in palpable violations of neutral rights, without even the color of justification in the usages of war, it becomes an intolerable tyranny, wounds the sovereignty of nations, and calls them to resistance by every motive of self-preservation and self-respect.

The conduct of France, from the commencement of her successes, has, by gradual developments, betrayed a spirit of universal domination; an opinion that she had a right to be the legislatrix of nations; that they are all bound to submit to her mandates, to take from her their moral, political, and religious creeds; that her plastic and regenerating hand is to mould them into whatever shape she thinks fit;

and that her interest is to be the sole measure of the rights of the rest of the world. The specious pretence of enlightening mankind, and reforming their civil institutions, is the varnish to the real design of subjugating them. The vast projects of a Louis XIV. dwindle into insignificance compared with the more gigantic schemes of his republican successors.

Men, well informed and unprejudiced, early discovered the symptoms of this spirit. Reasoning from human nature, they foresaw its growth with success; that from the love of dominion, inherent in the heart of man, the rulers of the most powerful nation in the world, whether a Committee of Safety or a Directory, will forever aim at an undue empire over other nations; and that this disposition, inflamed as it was by enthusiasm, if encouraged by a continuation of success, would be apt to exhibit itself, during the course of the French Revolution, in excesses of which there has been no example since the days of Roman greatness.

Every day confirms the justice of that anticipation. It is now indispensable that the disagreeable and menacing truth should be exposed in full day to the people of America; that they should contemplate it seriously, and prepare their minds for extremities, which nothing short of abject submission may be able to avert. This will serve them as an armor against the machinations of traitorous men, who may wish to make them instruments of the ambition of a foreign power, to persuade them to concur in forging chains for mankind, and to accept, as their award, the

despicable privilege of wearing them a day later than others.

Already in certain circles is heard the debasing doctrine that France is determined to reduce us to the alternative of war with her enemies, or war with herself, and that it is our interest and safety to elect the former.

There was a time when it was believed that a similar alternative would be imposed by Great Britain. At this crisis there was but one sentiment. The firmest friends of moderation and peace, no less than the noisiest partisans of violence and war, resolved to elect war with that power which should drive us to the election. This resolution was the dictate of morality and honor, of a just regard to national dignity and independence. If any consideration, in any situation, should degrade us into a different resolution, we, that instant, shake hands with crime and infamy: we descend from the high ground of an independent people, and stoop to the ignominious level of vassals. I trust there are few Americans who would not cheerfully encounter the worst evils of a contest with any nation on earth rather than subscribe to so shameful an abdication of their rank as men and citizens.

AMERICUS.

II

February 7, 1797.

Independent of the commands of honor the coolest calculations of interest forbid our becoming the instruments of the ambition of France, by associating with her in the war. The question is no longer the

establishment of liberty on the basis of republican government. This point the enemies of France have ceased to dispute. The question now is whether she shall be aggrandized by new acquisitions, and her enemies reduced by dismemberments, to a degree which may render her the mistress of Europe, and consequently, in a great measure, of America. This is truly the remaining subject of contention.

They who understood the real strength and resources of France before the present war, knew that she was intrinsically the most powerful nation of Europe. The incidents of the war have displayed this fact in a manner which is the astonishment of the world. If France can finally realize her present plan of aggrandizement, she will attain to a degree of greatness and power which, if not counteracted by internal disorder, will tend to make her the terror and the scourge of nations. The spirit of moderation in a state of overbearing power is a phenomenon which has not yet appeared, and which no wise man will expect ever to see. It is certain that a very different spirit has hitherto marked the career of the new republic; and it is due to truth to add, that the ardent, impetuous, and military genius of the French affords perhaps less prospect of such a spirit in them than in any other people.

'T were therefore contrary to our true interest to assist in building up this colossus to the enormous size at which she aims. 'T were a policy as short-sighted as mean to seek safety in a subserviency to her views as the price of her clemency. This at best would be but a temporary respite from the rod; if

indeed that can be called a respite, which is of itself the sacrifice of a real to a nominal independence.

These reflections are not designed to rouse a spirit of hostility against France, or to inculcate the idea that we ought of choice to participate in the war against her. They are intended merely to fortify the motives of honor, which forbid our stooping to be *compelled*, either to submit without resistance to a virtual war on her part, or to avert her blows by engaging in the war on her side.

When it was the opinion, that France was defending the cause of liberty, it was a decisive argument against embarking with her in the contest, that it would expose us to hazards and evils infinitely disproportioned to the assistance we could render. Now the question plainly is, whether France shall give the law to mankind. The addition of our opposition to her plan could have too little influence upon the event to justify our willingly encountering the certain dangers and mischiefs of the enterprise. 'T is our true policy to remain at peace if we can, to negotiate our subjects of complaint as long as they shall be at all negotiable, to defer and to wait.

When the indiscriminate seizure of our vessels by British cruisers, under the order of the sixth of November, 1793, had brought our affairs with Great Britain to a crisis, which led to the measure of sending a special envoy to that country to obtain relief and reparation, it was well understood that the issue of that mission was to determine the question of peace or war between the two nations. In like manner, it is to be expected that our Executive will make

a solemn and final appeal to the justice and interest of France, will insist in mild but explicit terms on the renunciation of the pretension to intercept the lawful commerce of neutrals with the enemies of France, and the institution of some equitable mode of ascertaining and retributing the losses which the exercise of it has inflicted upon our merchants. If the experiment shall fail, there will be nothing left but to repel aggression and defend our commerce and independence. The resolution to do this will then be imposed on the government by a painful but irresistible necessity, and it were an outrage to the American name and character to doubt that the people of the United States will approve the resolution, and will support it with a constancy worthy of the justice of their cause, and of the glory they have heretofore deserved and acquired.

No! let this never be doubted! the servile minions of France—those who have no sensibility to injury but when it comes from Great Britain, who are unconscious of any rights to be protected against France; who, at a moment when the public safety more than ever demands a strict union between the people and their government, traitorously labor to detach them from it, and to turn against the government, for pretended faults, the resentment which the real oppressions of France ought to inspire;—these wretched men will discover in the end, that they are as insignificant as they are unprincipled. They will find that they have vainly flattered themselves with the co-operation of the great body of those men with whom the spirit of party has hitherto associated

them. In such an extremity the adventitious discriminations of party will be lost in the patriotism and pride of the American character. Good citizens of every political denomination will remember that they are Americans; that when their country is in danger, the merit or demerit of particular measures is no longer a question; that it is the duty of all to unite their efforts to guard the national rights, to avert national humiliation, and to withstand the imposition of a foreign yoke. The true and genuine spirit of 1776, not the vile counterfeits of it which so often disgust our eyes and our ears, will warm every truly American heart, and light up in it a noble emulation to maintain inviolate the rights and unsullied the honor of the American nation. It will be proved, to the confusion of all false patriots, that we did not break the fetters of one foreign tyranny to put on those of another. It will be again proved to the world that we understand our rights, and have the courage to defend them.

But there is still ground to hope that we shall not be driven to this disagreeable extremity. The more deliberate calculations of France will probably rescue us from the present embarrassment. If she perseveres in her plan, she must inevitably add all the neutral powers to the number of her enemies. How will this fulfil the purpose of destroying the commerce of Great Britain? The commerce of those powers with France will then entirely cease, and be turned more extensively into the channels of Great Britain, protected by her navy, with the co-operation of the maritime force of those powers. The result

will be the reverse of what is projected by the measure. The commerce and revenue of Britain will, in all likelihood, be augmented rather than diminished; and her arms will receive an important reinforcement. Violent and unjust measures commonly defeat their own purpose. The plan of starving France was of this description, and operated against the views of its projectors. This plan now adopted by France, of cutting off the trade of neutrals with her enemies, alike violent and unjust, will no doubt end in similar disappointment. Let us hope that it will be abandoned, and that ultimate rupture will be avoided; but let us also contemplate the possibility of the contrary, and prepare our minds seriously for the unwelcome event.

AMERICUS.

III

February 21, 1797.

The Paris accounts inform us, that France has lately exercised toward Genoa an act of atrocious oppression, which is an additional and striking indication of the domineering and predatory spirit by which she is governed. This little republic, whose territory scarcely extends beyond the walls of her metropolis, has been compelled, it seems, to ransom herself from the talons of France by a contribution of nearly a million of dollars, a large sum for her contracted resources. For this boon, "the French Government engages on its part to *renounce all claims upon Genoa*, to forget what has passed during the present war, and to forbear any future demands."

It would appear from this, that France, to color the odious exaction, besides the pretence of misconduct toward her in the present war, has not disdained to resort to the stale and pitiful device of reviving some antiquated claim upon the country itself. In vain did the signal hazards encountered by Genoa to preserve her neutrality, in defiance of the host of enemies originally leagued against France,—in vain did the character and title of republic plead for a more generous treatment. The attractions of plunder predominated. The spirit of rapine, callous to the touch of justice, blind to the evidence of truth, deaf to the voice of entreaty, had marked out, and devoted the mark. There was no alternative but to compound or perish.

If it be even supposed, though this has never appeared, that at some period of the war Genoa may be chargeable with acts of questionable propriety in relation to France, it is manifest, that it ought to be attributed to the necessity of a situation which must have obliged her to temporize. A very small and feeble state, in the midst of so many great conflicting powers, parts of her territories occupied by armies which she was unable to oppose, it were a miracle, indeed, if her conduct in every particular will bear the test of rigorous scrutiny. But if at any time the pressure of circumstances may have occasioned some slight deviation, there is, nevertheless, full evidence of a constant solicitude on the part of Genoa to maintain, to the utmost of her ability, a sincere neutrality. It is impossible to forget the glorious stand which she at one time made against the imperious

efforts of Great Britain to force her from her neutral position. The magnanimous and exemplary fortitude which she displayed on that occasion excited in this country universal admiration, and must have made a deep impression. 'T is only to recollect that instance to be satisfied that the treatment which she has just experienced from France merits the indignant execration of mankind. Unfortunate Genoa! how little didst thou imagine that thou wert destined so soon to be compelled to purchase thy safety from the crushing weight of that hand which ought to have been the first to rise in thy defence!

How fruitful at the same time of instruction to us is this painful example! The most infatuated partisans of France cannot but see in it an unequivocal proof of the rapacious and vindictive policy which dictates her measures. All men must see in it, that the flagrant injuries which we are now suffering from her, proceed from a general plan of domination and plunder; from a disposition to prostrate nations at her feet; to trample upon their necks; to ravish from them whatever her avidity or convenience may think fit to dedicate to her own use.

The last intelligence from France seems to dispel the doubt whether the depredations in the West Indies may not have resulted from misapprehension or abuse of the orders of the French Government. It is now understood to be a fact that the cruisers of France everywhere are authorized to capture and bring in all vessels bound to the ports of her enemies.

This plan is pregnant with the worst evils, which

are to be dreaded from the declared and unqualified hostility of any foreign power. If France, after being properly called upon to renounce it, shall persevere in the measure, there cannot be a question but that open war will be preferable to such a state. By whatever name treachery or pusillanimity may attempt to disguise it, 't is in fact war of the worst kind, *war on one side*. If we can be induced to submit to it longer than is necessary to ascertain that it cannot be averted by negotiation, we are undone as a people. Whether our determination shall be to coop up our trade by embargoes, or to permit our commerce to continue to float an unprotected prey to French cruisers, our degradation and ruin will be equally complete. The destruction of our navigation and commerce, the annihilation of our mercantile capital, the dispersion and loss of our seamen—obliged to emigrate for subsistence,—the extinction of our revenue, the fall of public credit, the stagnation of every species of industry, the general impoverishment of our citizens,—these will be minor evils in the dreadful catalogue. Some years of security and exertion might repair them. But the humiliation of the American mind would be a lasting and a mortal disease in our social habit. Mental debasement is the greatest misfortune that can befall a people. The most pernicious of conquests which a state can experience is a conquest over that just and elevated sense of its own rights which inspires a due sensibility to insult and injury; over that virtuous and generous pride of character, which prefers any peril or sacrifice to a final submission to oppression, and

thing from France, rather than go to war with her. The nation, which can prefer disgrace to danger is prepared for a *Master* and deserves one.

AMERICUS.

IV

February 27, 1797.

The emissaries of France when driven from every other expedient for extenuating her depredations, have a last refuge in the example of Great Britain. The treatment which we now receive from France (say they) is not worse than that which we have received from Great Britain. If this apology were founded in fact, it would still be a miserable subterfuge. For what excuse is it to France, or what consolation to us, that she, our boasted friend and benefactress, treats us only not worse than a power which is stigmatized as an envious rival and an implacable foe?

The conduct of Great Britain, appealed to in justification of France, was admitted by all to be inexcusable. Even Gallic faction thought it so extreme as to call for immediate reprisals. The real patriots differed from them only in thinking, that an armed negotiation, to end in reprisals, if unattended with success, was preferable to immediate hostility. How dare the men, who at that period were the clamorous champions of our national dignity,—how dare they (I ask) now to stand forth the preachers not of moderation (for in the propriety of this all unite) but of tame submission—of a servility abject enough to love and cherish the hand which despoils us, to kiss

which regards national ignominy as the greatest of national calamities.

The records of history contain numerous proofs of this truth. But an appeal to them is unnecessary. Holland and Italy present to our immediate observation, examples as decisive as they are deplorable. The former within the last ten years has undergone two revolutions by the intervention of foreign powers, without even a serious struggle. Mutilated of precious portions of its territory at home by pretended benefactors but real despoilers, its dominions abroad slide into the possession of its enemies rather as derelicts than as the acquisitions of victory. Its fleets surrender without a blow. Important only by the spoils which it offers no less to its friends than to its enemies, every symptom in its affairs is portentous of national annihilation. With regard to Italy, 't is sufficient to say that she is debased enough, not even to dare to take part in a contest, on which, at this moment, her destiny is suspended.

Moderation in every nation is a virtue. In weak or young nations, it is often wise to take every chance by patience and address to divert hostility, and in this view to *hold parley* with insult and injury; but to *capitulate* with oppression, or rather to surrender to it at discretion, is, in any nation that has any power of resistance, at all times as foolish as it is contemptible. The honor of a nation is its life. Deliberately to abandon it, is to commit an act of political suicide. There is treason in the sentiment, avowed in the language of some, and betrayed by the conduct of others, that we ought to bear any

thing from France, rather than go to war with her. The nation, which can prefer disgrace to danger is prepared for a *Master* and deserves one.

AMERICUS.

IV

February 27, 1797.

The emissaries of France when driven from every other expedient for extenuating her depredations, have a last refuge in the example of Great Britain. The treatment which we now receive from France (say they) is not worse than that which we have received from Great Britain. If this apology were founded in fact, it would still be a miserable subterfuge. For what excuse is it to France, or what consolation to us, that she, our boasted friend and benefactress, treats us only not worse than a power which is stigmatized as an envious rival and an implacable foe?

The conduct of Great Britain, appealed to in justification of France, was admitted by all to be inexcusable. Even Gallic faction thought it so extreme as to call for immediate reprisals. The real patriots differed from them only in thinking, that an armed negotiation, to end in reprisals, if unattended with success, was preferable to immediate hostility. How dare the men, who at that period were the clamorous champions of our national dignity,—how dare they (I ask) now to stand forth the preachers not of moderation (for in the propriety of this all unite) but of tame submission—of a servility abject enough to love and cherish the hand which despoils us, to kiss

the rod which stings us with unprovoked lashes? What logic, what magic, can render innocent or venial in France that which was so criminal and odious in Great Britain?

The pretext (we know) of France is, that we have permitted Great Britain to treat us in the same manner, and her deluded or debauched adherents are mean or prostrate enough to re-echo the excuse.

Let us grant, for argument's sake, all that can be pretended on this subject—namely, that through want of energy in our administration, or from the opinion which it entertained of the situation of the country, there has been too much patience under the oppressions of Great Britain. Is this really a justification to France? Is a defect of vigor in the government of one country, or an underestimate of its means for repelling injury, a sufficient cause for another government, lavish in profession of friendship, to imitate toward it the aggressions which it has suffered from an oppressor? What in private life would be said of that man, who called himself the friend of another, and because the last had too passively allowed a third, the enemy of both, to wrest from him a portion of his property, should deduce from this a pretext to strip him of the remainder? Has language epithets too severe for such a character? Is not the guilt of unjust violence in a case like this aggravated by that of hypocrisy and perfidy?

But this is not our only reply. The truth is (and a truth we may boldly proclaim) that we never did tolerate the aggressions of Great Britain; that we

have steadily resisted them, and resisted them with success. In the respectable attitude of an armed negotiation, seconded by the self-denying and very influential measure of an embargo, we sent to demand a revocation of the orders under which we suffered, and retribution for the losses which we had sustained. The orders were revoked and the retribution has been stipulated, and the stipulation is in a course of honorable and liberal execution. The redress of ancient grievances, on the ground of a reciprocity, demanded by every principle of rectitude, has been superadded to that of more recent ones.

Our flags at this moment proudly wave on the ramparts which had been so long detained from us; and Indian butcheries along the whole extent of our vast frontier have been terminated. More than this —the redress obtained from Great Britain was a principal cause of the happy accommodation of our dispute with Spain, of the recognition of our right to navigate the Mississippi, and of the establishment of a southern boundary equal to our most sanguine wishes.[1] These are the fruits (and immense fruits they are) of a vigorous though temperate resistance to the aggressions of Great Britain.

'T is, therefore, in every sense false, that our gov-

[1] This consequence was foreseen and foretold. And the prediction is confirmed by that part of the declaration of war of Spain against Great Britain which makes it a charge against the latter, that in the treaty with the United States "she had no respect or consideration for the known rights of Spain," and in the sudden disappearance, after that treaty, of the obstacles which had so long impeded our negotiation with Spain.

ernment has *permitted* Great Britain *to do* as France is now *doing*. Except here and there the accidental irregularity of the commander of a particular ship, there is not one clear right which the law of nations entitles us to claim, that is not now respected by Great Britain, and to a degree unusual in the history of the treatment of neutral nations by great belligerent powers.

It follows that the suggestion on which France bottoms her ill-treatment of us is a frivolous and a colorless pretext. 'T is to confound all just ideas, to consider a temporary forbearance as a permission or acquiescence—to pretend, above all, to retaliate that injury after it has passed, has ceased, and has been redressed. We are bound, then, to conclude that our real crime in the eyes of France is, that we had the temerity to think and to act for ourselves, and did not plunge headlong into war with Great Britain; that the principal streams of our commerce, from the natural relations of demand and supply, flow through the channels of her commerce; and that the booty which it offers to rapacity exceeds the organized means of protection.

But a country, containing five millions of people, the second in the number of its seamen, that prime sinew of maritime force, with a varied industry, and an export of sixty millions, understanding its rights, not deficient in spirit to vindicate them, if compelled against its will to exert its strength and resources, will, under the guidance of faithful and patriotic counsels, be at no loss to convince its despoilers that there is as much folly as wickedness in

such a calculation. This reflection ought at once to console and to animate us; though the remembrance of former friendship and a spirit of virtuous moderation will induce us still to wish that there may be some error in appearances—that the views of France are not as violent and as hostile as they seem to be—that an amicable explanation may yet dispel the impending clouds, and brighten the political horizon with a happy reconciliation.

AMERICUS.

V

March 13, 1797.

I have asserted that the conduct of Great Britain toward us and other neutral powers has been at no period so exceptionable as that of France at the present juncture. A more distinct view of this truth may be useful, which will be assisted by a retrospect of the principal acts of violence on both sides.

Though the circumstances were contemporarily disclosed in all our newspapers, yet so blind and deaf were we rendered by our partiality for France, that few among us, till very lately, have been aware, that the first of those acts is fairly chargeable upon her. Such, notwithstanding, is the fact. The first in order of time is a decree of the National Convention of the 9th of May, 1793, which, reciting that neutral flags are not respected by the enemies of France, and enumerating some instances of alleged violation, proceeds to authorize the vessels of war and cruisers of France to arrest and conduct into her

ports *all neutral vessels* which are found *laden* in *whole* or in *part* with *provisions belonging to neutrals*, or *merchandises* belonging to the *enemies* of France; the latter to be confiscated as prize for the benefit of the captors, the former to be detained, but paid for according to their value at the places for which they were destined.

The instances enumerated as the pretext for so direct and formal an attack upon the rights of neutral powers, except two, turn upon the pretensions to capture goods of an enemy in the ships of a friend. Of the remaining two, one is the case of an American vessel going from *Falmouth* to *St. Maloes* with a cargo of wheat, which the decree states was taken by an English frigate and carried into Guernsey, where the agents of the English Government detained the cargo, upon a promise to pay the value, as not being for French account; the other is the case of some French passengers going in a *Genoese* vessel from *Cadiz* to *Bayonne*, who were plundered on the passage by the crew of an English privateer.

There is no question but that Great Britain, from the beginning of the war, has claimed and exercised the right of capturing the property of her enemies found in neutral bottoms, and it has been unanswerably demonstrated, that for this she has the sanction of the general law of nations. But France, from the exercise of that right by Great Britain, when not forbidden by any treaty, can certainly derive no justification for the imitation of the practice, in opposition to the precise and peremptory stipulations of her treaties. Every treaty which established the rule of

"*free ships free goods*," must have contemplated the unequal operation of that rule to the contracting parties, when one was at peace, the other at war; looking for indemnification to the correspondent of taking friends' property in enemies' ships, and to the reciprocal effect of the rule when the state of peace and war should be reversed. To make its unequal operation in an existing war an excuse for disregarding the rule, is therefore a subterfuge for a breach of faith, which hardly seeks to save appearances. France, as she once was, would have blushed to use it. It is one, among many instances, of the attempts of revolutionary France to dogmatize mankind out of its reason, as if she expected to work a change in the faculties as well as in the habits and opinions of men.

The case of the American vessel carried to Guernsey is that of a clear infraction of neutral right. But standing singly, it was insufficient evidence of a plan of the British Government to pursue the principle. It countenanced *suspicion* of a secret order for the purpose; but it did not amount to *proof* of such an order. There might have been misapprehension or misrepresentation; or if neither was the case, the circumstance was resolvable into the mere irregularity of particular agents; it is unjustifiable to ascribe to a government, as the result of a premeditated plan, and to use as the ground of reprisals, a single case of irregularity happening in a detached portion of the dominions of that government. France was bound to have waited for more full evidence. There was no warrant in a solitary precedent

for general retaliation; even if we could admit the detestable doctrine, that the injustice of one belligerent power towards neutral nations is a warrant for similar injustice in another.

The violation of the courtesy of war in the instance of the French passengers, however brutal in itself, was truly a frivolous pretext for the decree. The frequency of irregular conduct in the commanders and crews of privateers, even in contempt of the regulations of their own governments, naturally explains such a transaction into the cupidity of individuals, and forbids the imputation of it to their governments. There never was a war in which similar outrages did not occur in spite of the most sincere endeavors to prevent them.

The natural and plain conclusion is, that the decree in question was a wanton proceeding in the French Government, uncountenanced by the previous conduct either of its enemies, or of the neutral nations who were destined to punishment for their faults.

For, the first order of the British Government authorizing the seizure of provisions is dated the sixth of June, 1793, nearly a month posterior to the French decree. As there is not the least vestige of any prior order, the presumption is that none ever existed. If any had existed, the course of things has been such as to afford a moral certainty that it would have appeared. The subsequent date of the British order is a strong confirmation of the argument, that the affair of the vessel carried to Guernsey was nothing more than a particular irregularity.

The publicity of all the proceedings of the French

Government, and the celerity of communication between Paris and London, leave no doubt that the decree of May the 9th was known in London before the order of June the 6th. It follows, that France herself furnished to Great Britain the example and the pretext for the most odious of the measures with which she is chargeable; and, that so far as precedent can justify crime, Great Britain may find in the conduct of France the vindication of her own.

An obvious reflection presents itself. How great was the infatuation of France thus to set the example of an interruption of neutral commerce in provisions, in the freedom of which she was so much more interested than her adversaries. If the detention of the cargo at Guernsey was a bait, we cannot but be astonished at the stupid levity with which it was swallowed.

We are no less struck with the eager precipitancy with which France seized the pretext for a formal and systematic invasion of the rights of neutral powers; equally regardless of the obligations of treaty and of the injunctions of the laws of nations. The presumption of the connivance of the neutral power in infractions of its rights is the only colorable ground for the French idea of retaliation on the sufferers. Here the yet early stage of the war and the recency of the facts alleged as motives to the decree, preclude the supposition of connivance. The unjust violence of France, consequently, in resorting to retaliation, stands without the slightest veil. From this prominent trait we may distinguish, without possibility of mistake, the real character of her system. AMERICUS.

VI

March 27, 1797.

It has been seen that the Government of France has an indisputable title to the culpable pre-eminence of having taken lead in the violation of neutral rights; and that the first instance on the part of the British Government, is nearly a month posterior to the commencement of the evil by France. But it was not only posterior, it was also less comprehensive: that of France extended to *all provisions*, that of Great Britain to certain kinds only—CORN, FLOUR, and MEAL.

The French decree, as to the United States, was repeatedly suspended and revived. As to other neutral nations, it continued a permanent precedent to sanction the practice of Great Britain.

This decretal versatility is alone complete evidence of want of principle. It is the more censurable, because it is ascertained that it proceeded, in part at least, from a corrupt source. The sacred power of law-making became the minister and the accomplice of private rapine. Decrees exacted by the solemn obligations of treaty were sacrificed to sea rovers—to enable them to enjoy the prey, for the seizure of which they ought to have been condignly punished.[1]

The next and most injurious of the acts of Great Britain is the order of the 6th of November, 1793, which instructs the commanders of ships of war and privateers to stop, detain, and carry in for adjudica-

[1] The report of the Secretary of State mentions (as was known at the time) that one repeal was effected by the influence of the owners of a privateer, which had captured the valuable American ship *Laurens*, to give effect to her condemnation.

tion all ships, *laden* with the *produce* of any French colony, or carrying *provisions* or other supplies for the use of such colony. It was under the cover of this order that were committed the numerous depredations on our commerce, which were the immediate cause of sending an envoy to Great Britain.

The terms of this order were ambiguous, warranting a suspicion that they were designed to admit of an oppressive interpretation, and yet to leave room for a disavowal of it. Whether this was really the case, or whether the order was in fact misconstrued by the British officers and tribunals in the West Indies, it is certain that the British Government, almost as soon as their construction was known in England, not only disclaimed it, but issued a new order, dated the first of January, 1794, revoking that of the sixth of November, and expressly restraining the power to detain and carry in vessels for adjudication to *such* as were laden with the *produce* of a *French island* going from a port in the island to a port in Europe, to *such* as were *laden with the like produce belonging to subjects of France* whithersoever bound, to *such* as were *laden* in whole or in part *with naval or military stores bound to a French island.*

This last order obviated in a great measure the mischief of the former; and though its principles were in some respect such as we ought never to recognize, yet were they conformable with the practice of the principal maritime powers in antecedent modern wars, especially of France and Great Britain.

These acts comprise the whole of those on which the British spoliations have been founded. Taken

with all the latitude of construction adopted by the British officers and courts in the West Indies, they amount to this, and to no more: "*the seizure and appropriations of our corn, flour, and meal, going to a French port, on the condition of paying for them, the seizure and confiscation of our vessels* with their cargoes, when *laden* with the *produce* of a *French colony*, or in the act of carrying provisions or other supplies for the use of said colony." Our trade with France herself, except in corn, flour, and meal, and in contraband articles, has in the worst of times remained unmolested, and has even been allowed to be carried on directly from British ports.

Iniquitous and oppressive as were the acts of Great Britain, how very far short do they fall of the more iniquitous and oppressive decrees of France, as these have been construed and acted upon, not only by the colonial administrations, but by some of its tribunals in Europe! The decree of the second of July, 1796, purports in substance, that France will treat the neutral powers as they have permitted her enemies to treat them. But under this masked battery the whole of our trade with the enemies of France has been assailed. The two edicts of her proconsuls in the West Indies [1] proclaim the capture of all neutral vessels bound to or coming from English ports, and the uniform consequence is confiscation of vessel and cargo. We are now likewise officially informed that a French consular tribunal at Cadiz has condemned neutral vessels carried in there, on the

[1] Santhonax & Co., November 27, 1796. Victor Hugues, 13th Pluviose, 5th year of the Republic.

same broad principle. The evil to us has been magnified by various aggravations. Our vessels going from one neutral port to another, even our vessels going from French ports, have been the victims of the piratical spirit which dictated those edicts. Outrage, imprisonment, fetters, disease, and death, inflicted or brought upon the commanders and crews of our vessels, cause the bitter cup of our sufferings to overflow, and leave the imagination at a loss for a parallel without seeking for it in the ferocious regions of Barbary.

The ambiguity of the British order of November was a just subject of reproach to its authors. What shall be said of the perfidious ambiguity of the French decree of the 2d of July, 1796? When retaliation of the partial injuries which neutral nations have suffered from the enemies of France was announced, who could have dreamt that a universal war on their trade was meditated? Who that has a spark of the American in his soul can refuse his utmost indignation, as well at the manner as at the matter of this atrocious proceeding? Not only the partisans of France, the advocates for the honor of republican government, but the friends of human nature, must desire that the final explanation may reject, as a criminal abuse, the practice upon that decree, and repair as far as possible the mischiefs which it has occasioned.

But the treaty with Great Britain (still exclaim the dupes or hirelings of France), that abominable instrument, is the Pandora's box from which all our misfortunes issue. When that instrument was confirmed, who could have expected anything better?

Peace, ye seduced or seducing babblers! Had Denmark or Sweden any share in making that reprobated treaty? Besides the refutation of your flimsy pretence, by the ill-treatment in other shapes of several of the neutral powers in Europe—by the information from Cadiz of the indiscriminate seizure and condemnation of neutral vessels going to or coming from English ports,—do ye not read in the recent accounts from St. Bartholomews, a *Swedish* island, that not *Americans* only, that Danes, that Swedes, that all the neutral nations partake in the common calamity—alike the prey of a devouring rapacity? Will ye still then insist on the barefaced imposture of ascribing to the treaty grievances which are the mere effects of a spirit of oppression and rapine? Read the letter of Mr. Skipwith to Mr. Monroe, dated at Paris, the third of October, 1794, *prior* to the signature of the treaty by Mr. Jay. Remember that he is an American agent, acting under the eye of an American minister, and that both the minister and the agent are distinguished by a partiality for France, which exempts them from the suspicion of exaggerating her misdeeds. What does that letter tell us? Why, in express terms, that "INNUMERABLE embarrassments and difficulties had for a long time oppressed her commerce *in different ports of the republic;* that if the French Government did not soon remedy the *incessant abuses and vexations* practised *daily* upon our merchants, *the trade of the United States with France* must cease." Hence may we learn, that long before our treaty with Great Britain, the vexations of our trade in the ports of France were

so extreme as to have become intolerable; that "the indiscriminate capture of our vessels at sea by the vessels of war of the republic," [1] formed only one class of the injuries which our commerce has sustained: in a word, that the predatory system of France existed before the treaty, and has only of late acquired greater activity from the cravings of an exhausted treasury.

The man who, after this mass of evidence, shall be the apologist of France, and the calumniator of his own government, is not an American. The choice for him lies between being deemed a fool, a madman, or a traitor.

THE STAND [2]

(From the New York *Commercial Advertiser*.)

I

March 10, 1798.

The enlightened friends of America never saw greater occasion of disquietude than at the present juncture. Our nation, through its official organs, has been treatied with studied contempt and systematic insult: essential rights of the country are perseveringly violated, and its independence and liberty eventually threatened by the most flagitious, despotic, and vindictive government that ever disgraced the annals of mankind; by a government marching

[1] This is also a passage verbatim from Mr. Skipwith's letter—and he produces a long list of cases to support his assertions.

[2] We were now on the verge of the X. Y. Z. letters and an open rupture with France. To arouse the people at this crisis to their true policy towards the French, Hamilton published *The Stand*.

with hasty and colossal strides to universal empire, and in the execution of this hideous project, wielding with absolute authority the whole physical force of the most enthralled but most powerful nation on earth. In a situation like this, how great is the cause to lament, how afflicting to every heart alive to the honor and interests of its country to observe, that distracted and inefficient councils, that a palsied and unconscious state of the public mind, afford too little assurance of measures adequate either to the urgency of the evils which are felt, or to the magnitude of the dangers which are in prospect.

When Great Britain attempted to wrest from us those rights, without which we must have descended from the rank of freemen, a keen and strong sense of injury and danger ran with electric swiftness through the breasts of our citizens. The mass and weight of talents, property, and character hastened to confederate in the public cause. The great body of our community everywhere burned with a holy zeal to defend it, and were eager to make sacrifices on the altar of their country.

If the nation with which we were called to contend was then the preponderating power of Europe; if by her great wealth and the success of her arms she was in a condition to bias or to awe the cabinets of princes; if her fleets covered and domineered over the ocean, facilitating depredation and invasion; if the penalties of rebellion hung over an unsuccessful contest; if America was yet in the cradle of her political existence; if her population little exceeded two millions; if she was without government, with-

out fleets or armies, arsenals or magazines, without military knowledge; still her citizens had a just and elevated sense of her rights; were thoroughly awake to the violence and injustice of the attack upon them; saw the conduct of her adversary without apology or extenuation; and under the impulse of these impressions and views, determined, with little short of unanimity, to brave every hazard in her defence.

This magnanimous spirit was the sure pledge that all the energies of the country would be exerted to bring all its resources into action; that whatever was possible would be done towards effectual opposition; and this, combined with the immense advantage of distance, warranted the expectation of ultimate success. The event justified the expectation and rewarded the glorious spirit from which it was derived.

Far different is the picture of our present situation! The five tyrants of France, after binding in chains their own countrymen, after prostrating surrounding nations, and vanquishing all external resistance to the revolutionary despotism at home, without the shadow of necessity, with no discernible motive, other than to confirm their usurpation and extend the sphere of their domination abroad,—these implacable tyrants obstinately and remorselessly persist in prolonging the calamities of mankind, and seem resolved, as far as they can, to multiply and perpetuate them. Acting upon the pretension to universal empire, they have at length in fact, though not in name, decreed war against all nations not in league with themselves; and towards

this country in particular, they add to a long train of unprovoked aggressions and affronts the insupportable outrage of refusing to receive the extraordinary ambassadors whom we sent to endeavor to appease and conciliate. Thus have they, in regard to us, filled up the measure of national insult and humiliation. 'T is not in their power, unless we are accomplices in the design, to sink us lower. 'T is only in our own power to do this by an abject submission to their will.

But though a knowledge of the true character of the citizens of this country will not permit it to be suspected that a majority either in our public councils or in the community can be so degraded or infatuated; yet to the firm and independent lover of his country, there are appearances at once mortifying and alarming.

Among those who divide our legislative councils, we perceive hitherto, on the one side, unremitting efforts to justify or excuse the despots of France, to vilify and discredit our own government, of course to destroy its necessary vigor, and to distract the opinion and to damp the zeal of our citizens,—what is worse, to divert their affections from their own to a foreign country; on the other side, we have as yet seen neither expanded views of our situation, nor measures at all proportioned to the seriousness and extent of the danger. While our independence is menaced, little more is heard than of guarding our trade, and this too in very feeble and tremulous accents.

In the community, though in a sounder state than

its representatives, we discover the vestiges of the same divisions which enervate our councils. A few —happily, a contemptible few,—prostituted to a foreign enemy, seem willing that their country should become a province to France. Some of these dare even to insinuate the treasonable and parricidal sentiment, that in case of invasion they would join the standard of France. Another and a more considerable part are weak enough to appear disposed to sacrifice our commerce, to endure every indignity, and even to become tributary, rather than to encounter war or to increase the chances of it; as if a nation could preserve any rights—could even retain its freedom,—which should conduct itself on the principle of passive obedience to injury and outrage; as if the debasement of the public mind did not include the debasement of the individual mind, and the dereliction of whatever adorns or exalts human nature; as if there could be any security in compounding with tyranny and injustice by degrading compliances; as if submission to the existing violations of our sovereignty would not invite still greater, and whet the appetite to devour us by the allurement of an unresisting prey; as if war was ever to be averted by betraying unequivocally a pusillanimous dread of it as the greatest of all evils.

This country has doubtless powerful motives to cultivate peace. It is its policy, for the sake of this object, to go a great way in yielding secondary interests, and to meet injury with patience, as long as it could be done without the manifest abandonment of essential rights—without absolute dishonor. But to

do more than this is suicide in any people who have the least chance of contending with effect. The conduct of our government has corresponded with the cogent inducements to a pacific system. Toward Great Britain it displayed forbearance—toward France it hath shown humility. In the case of Great Britain its moderation was attended with success. But the inexorable arrogance and rapacity of the oppressors of unhappy France bar all the avenues to reconciliation as well as to redress, accumulating upon us injury and insult, till there is no choice left but between resistance and infamy. My countrymen, can ye hesitate which to prefer? Can ye consent to taste the brutalizing cup of disgrace; to wear the livery of foreign masters; to put on the hateful fetters of foreign bondage? Will it make any difference to you, that the badge of your servitude is a *cap* rather than an *epaulet*? Will tyranny be less odious because five instead of one inflict the rod? What is there to deter you from the manful vindication of your rights and your honor?

With an immense ocean rolling between the United States and France; with ample materials for ship-building, and a body of hardy seamen more numerous and more expert than France can boast; with a population exceeding five millions, spread over a wide extent of country, offering no one point, the seizure of which, as of the great capitals of Europe, might decide the issue; with a soil liberal of all the productions that give strength and resource; with the rudiments of the most essential manufactures, capable of being developed in proportion to

our want; with a numerous and, in many quarters, well-appointed militia; with respectable revenues and a flourishing credit; with many of the principal sources of taxation yet untouched; with considerable arsenals, and the means of extending them; with experienced officers ready to form an army under the command of the same illustrious chief who before led them to victory and glory, and who, if the occasion should require it, could not hesitate to obey the summons of his country;—what a striking and encouraging contrast does this situation in many respects present, to that in which we defied the thunder of Britain! What is there in it to excuse or palliate the cowardice and baseness of a tame surrender of our rights to France?

The question is unnecessary. The people of America are neither idiots nor dastards. They did not break one yoke to put on another. Though a portion of them have been hitherto misled; yet not even these, still less the great body of the nation, can be long unaware of the true situation, or blind to the treacherous arts by which they are attempted to be hoodwinked. The unfaithful and guilty leaders of a foreign faction, unmasked in all their intrinsic deformity, must quickly shrink from the scene appalled and confounded. The virtuous whom they have led astray will renounce their exotic standard. Honest men of all parties will unite to maintain and defend the honor and the sovereignty of their country.

The crisis demands it. 'T is folly to dissemble. The despots of France are waging war against us. Intoxicated with success and the inordinate love of

power, they virtually threaten our independence. All amicable means have in vain been tried towards accommodation. The problem now to be solved is whether we will maintain or surrender our sovereignty. To maintain it with firmness is the most sacred of duties, the most glorious of tasks. The happiness of our country, the honor of the American name, demands it; the genius of independence exhorts to it; the secret mourning voice of oppressed millions in the very country whose despots menace us, admonish to it by their suffering example; the offended dignity of man commands us not to be accessory to its further degradation; reverence to the Supreme Governor of the universe enjoins us not to bow the knee to the modern Titans [1] who erect their impious crests against him and vainly imagine they can subvert his eternal throne.

But 't is not enough to resist. 'T is requisite to resist with energy. That will be a narrow view of our situation which does not contemplate that we may be called, at our very doors, to defend our independence and liberty, and which does not provide against it by bringing into activity and completely organizing all the resources of our country. A respectable naval force ought to protect our commerce, and a respectable army ought both to diminish the temptation to invasion, by lessening the apparent chance of success, and to guarantee us not only against the signal success of such an attempt, but against the serious though partial calamities which in that case would certainly await us if we have to

[1] A race of giants fabled of old to have made war on heaven.

rely on militia alone against the enterprises of veteran troops, drenched in blood and slaughter, and led by a skilful and daring chief.

TITUS MANLIUS.

II

April 4, 1798.

The description of *vice*, by a celebrated poet, may aptly be applied to the Revolutionary Government of France. It is

> " A monster of such horrid mien
> As to be *hated* needs but to be *seen*."

Unfortunately, however, for mankind, a species of moral pestilence has so far disordered the mental eye of a considerable portion of it, as to prevent a distinct view of the deformities of this prodigy of human wickedness and folly. It is the misfortune of this country in particular, that too many among its citizens have seen the monster, in all its dreadful transformations, with complacency or toleration. Nor is it among the least of the contradictions of the human mind, that a religious, moral, and sober people should have regarded with indulgence so frightful a volcano of atheism, depravity, and absurdity; that a gentle and humane people should have viewed without detestation, so hateful an instrument of cruelty and bloodshed; that a people having an enlightened and ardent attachment to genuine liberty, should have contemplated without horror so tremendous an engine of despotism and slavery. The film indeed begins to be removed, but

the vision of many of those who have been under its influence is not yet restored to the necessary energy or clearness.

It is of the last importance to our national safety and welfare, that the remaining obscurity should be speedily dispelled. Till this shall be the case, we shall stand on the brink of a precipice.

To exhibit the hydra in all its horrible pre-eminence of guilt and mischief, would require volumes. Slight sketches, chiefly to portray its character in reference to other nations, are all that will comport with the plan of these papers.

In retracing the progress of a war which has immersed Europe in blood and calamity, it is an error as common as it is strange to acquit France of responsibility, and throw the whole blame upon her adversaries. This is a principal source of the indulgence which is shown to the extravagances and enormities of her revolution. And yet the plainest facts demonstrate that the reverse of this supposition is far more agreeable to truth. It required all the bold imposing pretences of the demagogues of France, all the docile partiality of a warm admiration for her revolution, to have secured a moment's success to so glaring a deception.

The origin of the war is usually charged to the treaty of Pilnitz and to the counter-revolutionary projects of the parties to it.

To this day we are without authentic and accurate evidence of the nature of that treaty. Taking its existence for granted, there is not the least proof that it comprehended any other powers than Austria,

Prussia, and Sardinia. Beyond these therefore unless suspicion be substituted for fact, it could not afford even a pretext for hostility. It is likewise certain that, after the date assigned to the treaty of Pilnitz, the emperor, who was the reputed head of the confederacy, gave strong proof of the renunciation of its object, if hostile to the revolution, by signifying, through his ministers, to all the foreign courts, his determination to acquiesce in the constitution of 1792, accepted by Louis the XVI.

The diplomatic correspondence between France and Austria, which preceded the rupture, evinces that the treaty of Pilnitz was not the cause of the war, for it is not even mentioned. The immediate, ostensible cause, as it there appears, was the refusal of Austria to disarm in compliance with the peremptory demand of France: a demand to which this apparently very reasonable reply was given—that France had previously armed to a greater extent; and that Austria could not safely reduce her force while France remained in so disturbed and inflamed a state as to leave her neighbors every moment exposed to the enterprises of her revolutionary fervor. There is no absolute criterion by which it can be pronounced whether this reply was merely a pretext or the dictate of a serious apprehension. But it is certain that the correspondence discovers great appearance of moderation and candor, on the part of the imperial cabinet, and it is not to be denied, that the state of effervescence of the French nation at this juncture furnished real cause of alarm to the neighboring governments.

It is then, at best, problematical, whether France in declaring war, as she did at the same time against Austria and Prussia, was actuated by the conviction that it was necessary to anticipate and disconcert the unfriendly views of those powers; or whether the war, as has been suggested with great probability, was sought by the republican party as a means of embarrassing the executive government, and paving the way for the overthrow of royalty. Two things well established are instructive on this point. The one, that the king was driven against his wish, by a ministry forced upon him by the popular party, to propose the declaration of war, which he considered as the tomb of his family; the other, that Brissot, the head of the then prevailing faction, some time afterwards exultingly boasted that, "but for this war, the revolution of the tenth of August would never have taken place—that, but for this war, France would never have been a republic."

Admitting nevertheless that the true source of the war with Austria and Prussia is enveloped in some obscurity, there is none as to the wars in which France became subsequently engaged. It is clear as to them that she was the original aggressor.

It appeared from contemporary testimony that one of the first acts of that assembly which dethroned the king was, in a paroxysm of revolutionary frenzy, to declare itself "*A Committee of Insurrection* of the whole human race, for the purpose of overturning all existing government." This extravagant declaration surpasses any thing to be found in the ample record of human madness. It amounted to an act of hos-

tility against mankind. The republic of America no less than the despotism of Turkey was included in the anathema. It breathed that wild and excessive spirit of fanaticism which would scruple no means of establishing its favorite tenets; and which, in its avowed object, threatening the disorganization of all governments, warranted a universal combination to destroy the monstrous system of which it was the soul.

The decrees of the 19th of November and the 15th of December, 1792, were modifications of the same spirit. The first offered fraternity and assistance to every people who should wish to recover their liberty, and charged the executive power to send orders to their generals to give that assistance, and to defend *those citizens* who had been or might be vexed for the cause of liberty.

The last declared that the French nation would *treat as* enemies *any people* who, refusing or *renouncing liberty* and *equality*, were desirous of preserving, recalling, or entering into accommodation with their prince and privileged castes.

The first was a general signal to insurrection and revolt. It was an invitation to the seditious of every country, in pursuit of chimerical schemes of more perfect liberty, to conspire under the patronage of France against the established government, however free. To assist a people in a reasonable and virtuous struggle for liberty, already begun, is both justifiable and laudable; but to incite to revolution everywhere by indiscriminate offers of assistance beforehand, is to invade and endanger the foundation of social

tranquillity. There is no term of reproach or execration too strong for so flagitious an attempt.

The last of the two decrees is not merely in spirit—it is in terms equivalent to a manifesto of war against every nation having a prince or nobility. It declares explicitly and formally that the French nation *will treat as enemies every people* who may desire to preserve or restore a government of that character.

It is impossible not to feel the utmost indignation against so presumptuous and so odious a measure. It was not only to scatter the embers of a general conflagration in Europe; it was to interfere coercively in the interior arrangements of other nations; it was to dictate to them, under the penalty of the vengeance of France, what form of government they should live under; it was to forbid them to pursue their political happiness in their own way; it was to set up the worst of all despotisms, a despotism over opinion, not against one nation, but against almost all nations. With what propriety is the interference of the powers ultimately coalesced against France, in her interior arrangements, imputed to them as an unpardonable crime, when her leaders had given so terrible an example, and had provoked retaliation as a means of self-preservation?[1]

These decrees preceded the transactions which im-

[1] If it be true, as pretended, that Austria and Prussia first interfered in this way with France, it was no plea for her to retaliate on all the rest of Europe. Great Britain in particular, as far as appears, had observed a fair neutrality. Yet the principle of the French decree was emphatically pointed against her, by the open reception of deputations of malcontents, and public declarations to them, on behalf of the French Government, avowing the desire of seeing all thrones overturned, of a national convention, and a republican revolution in England.

mediately led to a rupture between France and the other powers, Austria and Prussia excepted.

It is idle to pretend, that they did not furnish to those powers just cause of war. There is no rule of public law better established, or on better grounds, than that when one nation unequivocally avows maxims of conduct dangerous to the security and tranquillity of others, they have a right to attack her and to endeavor to disable her from carrying her schemes into effect. They are not bound to wait till inimical designs are matured for action, when it may be too late to defeat them.

How far it may have been wise in a particular government to have taken up the gauntlet, or, if in its option, to have left France to the fermentations of the pernicious principles by which its leaders were actuated, is a question of mere expediency, distinct from the right. It is also a complicated and difficult question, one which able and upright men might decide different ways. But the right is still indisputable. The moment the convention vomited forth these venomous decrees, all the governments threatened were justifiable in making war upon France.

Neither were they bound to be satisfied with after-explanations or qualifications of the principles which had been declared. They had a right to judge conscientiously whether reliance could be placed on any pretended change of system, and to act accordingly. And while the power of France remained in the same men, who had discovered such hostile views, and while the effervescence of the public mind continued at its height, there could not have been, in the

nature of things, any security in assurances of greater moderation. Fanaticism is a spirit equally fraudulent and intractable. Fanatics may dissemble the better to effect their aims, but they seldom suddenly reform. No faith is due to the reformation which they may effect, unless it has been the work of time and experience.

But whether a wrong or right election, in point of expediency, may have been made by all or any of the powers which, after the passing of those decrees, became engaged in hostility with France, it is not the less true, that her government was the first aggressor, and is primarily chargeable with the evils which have followed. This conclusion is greatly aided by the striking fact, that it was France which declared war, not only against Austria and Prussia, but against England, Spain, Sardinia, and Holland.

Two very important inferences result from the facts which have been presented: one, that in blowing up the dreadful flame which has overwhelmed Europe in misfortune, France is the party principally culpable; the other, that the prominent original feature of her revolution is the spirit of proselytism, or the desire of new modelling the political institutions of the rest of the world according to her standard. The course of the revolution also demonstrates that, whatever change of system may have been at any time pretended, or however the system may in particular instances have yielded to a temporary policy, it has continued in the main to govern the conduct of the parties who have successively triumphed and tyrannized.

TITUS MANLIUS.

III

April 7, 1798.

In reviewing the disgusting spectacle of the French Revolution, it is difficult to avert the eye entirely from those features of it which betray a plan to disorganize the human mind itself, as well as to undermine the venerable pillars that support the edifice of civilized society. The attempt by the rulers of a nation to destroy all religious opinion, and to pervert a whole nation to atheism, is a phenomenon of profligacy reserved to consummate the infamy of the unprincipled reformers of France. The proofs of this terrible design are numerous and convincing.

The animosity to the Christian system is demonstrated by the single fact of the ridiculous and impolitic establishment of the decades, with the evident object of supplanting the Christian Sabbath. The inscriptions by public authority on the tombs of the deceased, affirming death to be an eternal sleep, witness the desire to discredit the belief of the immortality of the soul. The open profession of atheism in the convention,[1] received with acclamations; the honorable mention on its journals of a book professing to prove the nothingness of all religion[2]; the institution of a festival to offer public worship to a courtesan decorated with the pompous title of "Goddess of Reason"; the congratulatory reception of impious children appearing in the hall of the convention to lisp blasphemy against the King of kings, are among the dreadful proofs of a conspiracy to estab-

[1] By Dupont, Danton, etc.

[2] Written and presented by Anacharsis Clootz, calling himself orator of the human race.

lish atheism on the ruins of Christianity,—to deprive mankind of its best consolations and most animating hopes, and to make a gloomy desert of the universe.

Latterly, the indications of this plan are not so frequent as they were, but from time to time something still escapes which discovers that it is not renounced. The late address of Buonaparte to the Directory is an example. That unequalled conqueror, from whom it is painful to detract, in whom one would wish to find virtues worthy of his shining talents, profanely unites religion (not superstition) with royalty and the feudal system as the scourges of Europe for centuries past. The decades likewise remain the *catapulta* which are to batter down Christianity.

Equal pains have been taken to deprave the morals as to extinguish the religion of the country, if indeed morality in a community can be separated from religion. It is among the singular and fantastic vagaries of the French Revolution, that while the Duke of Brunswick was marching to Paris a new law of divorce was passed, which makes it as easy for a husband to get rid of his wife, and a wife of her husband, as to discard a worn-out habit.[1] To complete the dissolution of those ties, which are the chief links of domestic and ultimately of social attachment, the journals of the convention record with guilty applause the accusations preferred by children against their parents.

It is not necessary to heighten the picture by

[1] This law, it was understood, had been lately modified in consequence of its manifestly pernicious tendency: but upon a plan which, according to the opinions of the best men in the two councils lately banished, would leave the evil in full force.

sketching the horrid group of proscriptions and murders which have made France a den of pillage and slaughter; blackening with eternal opprobrium the very name of man.

The pious and moral weep over these scenes as a sepulchre destined to entomb all they revere and esteem. The politician who loves liberty, sees them with regret as a gulf that may swallow up the liberty to which he is devoted. He knows that morality overthrown (and morality *must* fall with religion), the terrors of despotism can alone curb the impetuous passions of man, and confine him within the bounds of social duty.

But let us return to the conduct of revolutionary France towards other nations, as more immediately within our purpose.

It has been seen that she commenced her career as the champion of universal liberty; and proclaiming destruction to the governments which she was pleased to denominate despotic, made a tender of fraternity and assistance to the nations whom they oppressed. She at the same time disclaimed conquest and aggrandizement.

But it has since clearly appeared that at the very moment she was making these professions, and while her diplomatic agents were hypocritically amusing foreign courts [1] with conciliatory explanations and promises of moderation, she was exerting every faculty, by force and fraud, to accomplish the very conquest and aggrandizement which she insidiously disavowed. The people of Belgium, ensnared by

[1] England among the rest.

lish atheism on the ruins of Christianity,—to deprive mankind of its best consolations and most animating hopes, and to make a gloomy desert of the universe.

Latterly, the indications of this plan are not so frequent as they were, but from time to time something still escapes which discovers that it is not renounced. The late address of Buonaparte to the Directory is an example. That unequalled conqueror, from whom it is painful to detract, in whom one would wish to find virtues worthy of his shining talents, profanely unites religion (not superstition) with royalty and the feudal system as the scourges of Europe for centuries past. The decades likewise remain the *catapulta* which are to batter down Christianity.

Equal pains have been taken to deprave the morals as to extinguish the religion of the country, if indeed morality in a community can be separated from religion. It is among the singular and fantastic vagaries of the French Revolution, that while the Duke of Brunswick was marching to Paris a new law of divorce was passed, which makes it as easy for a husband to get rid of his wife, and a wife of her husband, as to discard a worn-out habit.[1] To complete the dissolution of those ties, which are the chief links of domestic and ultimately of social attachment, the journals of the convention record with guilty applause the accusations preferred by children against their parents.

It is not necessary to heighten the picture by

[1] This law, it was understood, had been lately modified in consequence of its manifestly pernicious tendency: but upon a plan which, according to the opinions of the best men in the two councils lately banished, would leave the evil in full force.

sketching the horrid group of proscriptions and murders which have made France a den of pillage and slaughter; blackening with eternal opprobrium the very name of man.

The pious and moral weep over these scenes as a sepulchre destined to entomb all they revere and esteem. The politician who loves liberty, sees them with regret as a gulf that may swallow up the liberty to which he is devoted. He knows that morality overthrown (and morality *must* fall with religion), the terrors of despotism can alone curb the impetuous passions of man, and confine him within the bounds of social duty.

But let us return to the conduct of revolutionary France towards other nations, as more immediately within our purpose.

It has been seen that she commenced her career as the champion of universal liberty; and proclaiming destruction to the governments which she was pleased to denominate despotic, made a tender of fraternity and assistance to the nations who were oppressed. She at the same time disclaimed all conquest and aggrandizement.

But it has since clearly appeared that at the very moment she was making these professions, and while her diplomatic agents were hypocritically [illegible] foreign courts[1] with conciliatory expressions and promises of moderation, she was exerting every faculty, by force and fraud, to [illegible] conquest and aggrandizement which she had disavowed. The people of [illegible]

[1] England.

fair pretences, believed that in abandoning the defence of their country and the cause of their ancient sovereign, they acquired a title to enjoy liberty under a government of their own choice, protected by France. Contrary to the hopes which were inspired —contrary to the known will of a large majority of that people—contrary to all their religious and national prejudices, they have been compelled to become departments of France. And their violated temples have afforded a rich plunder to aliment further conquest and oppression. The Dutch, seduced by the same arts to facilitate rather than obstruct the entrance of a French army into their country, thought they were only getting rid of their stadtholder and nobles, and were to retain their territory and their wealth, secured by such a civil establishment as they should freely choose. Their reward is the dismemberment of their country and the loss of their wealth by exhausting contributions; and they are obliged to take a government, dictated by a faction openly countenanced and supported by France. Completely a province of France, in imitation of their frantic masters they are advancing with rapid strides to a lawless tyranny at home.[1] France, professing eternal hatred to kings, was to be the tutelary genius of republics. Holland, Genoa, Venice, the Swiss Canton, and the United States, are agonizing witnesses of her sincerity.

Of undone Holland no more need be said; nothing

[1] By the last accounts, some of the most independent citizens have been seized and imprisoned merely for the constitutional exercise of their opinion.

remains for us but to exercise tender sympathy in the unfortunate fate of a country which generously lent its aid to establish our independence, and to deduce from her melancholy example an instructive lesson to repel with determined vigor the mortal embrace of her seducer and destroyer.

Genoa, a speck on the globe, for having at every hazard resisted the efforts of the enemies of France to force her from a neutral station, is recompensed with a subversion of her government and the pillage of her wealth, by compulsory and burthensome contributions.

Venice is no more! In vain had she preserved a faithful neutrality, when, perhaps, her interposition might have inclined the scale of victory in Italy against France. A few of her citizens [1] kill some French soldiers. Instant retaliation takes place. Every atonement is offered. Nothing will suffice but the overthrow of her government. 'T is effected. Her own citizens, attracted by the lure of democracy, become accessory to it, and receive a popular government at the hand of France. What is the sequel? what the faith kept with them? It suits France to bribe the emperor to a surrender of the Netherlands and to peace, that she may pursue her projects elsewhere with less obstacle. It suits France to extend her power and commerce by the acquisitions of portions of the Venetian territories. The bribe is offered and accepted. Venice is divided. She disappears from the map of nations. The tragedy of Poland is re-enacted with circumstances of aggravated atrocity.

[1] Were they not French agents employed to create the pretext?

France is perfidious enough to sacrifice a people who at her desire, had consented to abrogate their privileged castes to the chief of those despots against whom she had vowed eternal hatred.

The Swiss Cantons—the boast of republicans—the model to which they have been glad to appeal in proof that a republican government may consist with the order and happiness of society—the old and faithful allies of France, who are not even pretended to have deviated from sincere neutrality,—what are they at this moment? Perhaps like Venice, a *story told!* The despots of France had found pretences to quarrel with them; commotions were excited; the legions of France were in march to second the insurgents. Little other hope remains than that the *death* of this respectable people will be as glorious as their life; that they will sell their independence as dearly as they bought it. But why despair of a brave and virtuous people who appear determined to meet the impending danger with a countenance emulous of their ancient renown?

The United States—what is their situation? Their sovereignty trampled in the dust, and their commerce bleeding at every pore, speak in loud accents the spirit of oppression and rapine which characterizes the usurpers of France. But of this a distinct view is requisite, and will be taken.

In these transactions we discover ambition and fanaticism marching hand in hand—bearing the ensigns of hypocrisy, treachery, and rapine. The dogmas of a false and fatal creed second the weapons of ambition. Like the prophet of Mecca, the tyrants

of France press forward with the alcoran of their faith in one hand and the sword in the other. They proselyte, subjugate, and debase; no distinction is made between republic and monarchy; all must alike yield to the aggrandizement of the "*great nation*"—the distinctive, the arrogant appellation lately assumed by France to assert in the face of nations her superiority and ascendency. Nor is it a mere title with which vanity decorates itself—it is the substantial claim of dominion. France, swelled to a gigantic size, and aping ancient Rome, except in her virtues, plainly meditates the control of mankind, and is actually giving the law to nations. Unless they quickly rouse and compel her to abdicate her insolent claim, they will verify the truth of that philosophy, which makes man in his natural state a quadruped, and it will only remain for the miserable animal, converting his hands into paws in the attitude of prone submission, to offer his patient and servile back to whatever burthens the *lordly* tyrants of France may think fit to impose. TITUS MANLIUS.

IV

April 12, 1798.

In the pursuit of her plan of universal empire, the two objects which now seem to occupy the attention of France, are a new organization of Germany favorable to other influence, and the demolition of Great Britain. The subversion and plunder, first of Portugal and next of Spain, will be merely collateral instances in the great drama of iniquity.

In the new distribution of the territories, popula-

tion, and political power of the Germanic body, which has been announced as in contemplation of the Directory, three characters are conspicuous: a despotism to build up rivals to the imperial chief, strong enough to feel the sentiment of competition, but too weak to hazard it alone, who will therefore stand in need of the patronage of France, and, as a consequence, will facilitate her influence in the affairs of the empire; a generosity in making compensation, at the expense of others, for the spoils with which she has aggrandized herself; a facility of transferring communities like herds of cattle from one master to another, without the privilege of an option. In a project like this, it is impossible to overlook the plain indications of a restless, overbearing ambition, combined with a total disregard of the rights and wishes of nations. The people are counted for nothing, their masters every thing.

The conduct of France towards Great Britain is the copy of that of Rome towards Carthage. Its manifest aim is to destroy the principal obstacle to a domination over Europe. History proves that Great Britain has repeatedly upheld the balance of power there, in opposition to the grasping ambition of France. She has no doubt occasionally employed the pretence of danger, as the instrument of her own ambition; but it is not the less true that she has been more than once an essential and effectual shield against real danger. This was remarkably the case in the reign of Louis the XIVth, when the security of Europe was seriously threatened by the successful enterprises of that very ambitious monarch

The course of the last negotiation between France and Britain leaves no doubt that the former was resolved against peace on any practicable terms. This of itself indicates that the destruction of the latter is the direct object in view. But this object is not left to inference. It has been fastidiously proclaimed to the world; and the necessity of crushing the *tyrant* of the *sea* has been trumpeted as a motive to other powers to acquiesce in the execution of a plan by which France endeavors to become the *tyrant* both of *sea* and *land*. The understanding of mankind has, at the same time, been mocked with the proposition that the peace of Europe would be secured by the aggrandizement of France on the ruins of her rivals; because then, it is said, having nothing to fear, she would have no motive to attack; as if moderation was to be expected from a government or people having the power to impose its own will without control. The peace of Europe would in such a case be the peace of vassalage.

Towards the execution of the plan of destroying Great Britain, the rights of other nations are daringly and openly invaded. The confiscation is decreed of all vessels with their cargoes, if composed in any part of articles of British fabric; and all nations are to be compelled to shut their ports against the meditated victim. Hamburg is stated to have already reluctantly yielded to this humiliating compulsion.

While the demolition of Great Britain is eagerly pursued as a primary object, that of Portugal seems designed to form an episode in the tragedy. Her fears had induced her to buy a peace. The money

she had paid was the immediate instrument of the revolution of September last. Yet no sooner had the news of pacification with the emperor reached Paris, than pretences were sought to elude the ratification of the purchased treaty. A larger tribute was demanded—more probably than it was expected Portugal would be able to pay, to serve as an excuse for marching an army to revolutionize and plunder.[1] The blow may perhaps be suspended by further sacrifices, but it is not likely to be finally averted.

Spain, too, was in a fair way of enjoying the fruits of her weakness in putting on the yoke of France, and of furnishing another proof of the general scheme of aggrandizement and oppression. The demand of the cession of Louisiana, long pressed upon her, had at length become categoric. The alternative was to comply or offend. The probability is that before this time the cession has been made; and Spain has learnt to her cost that the chief privilege of an ally of France is to be plundered at discretion. With the acquisition of Louisiana, the foundation will be laid for stripping her of South America and her mines; and perhaps for dismembering the United States. The magnitude of this mighty mischief is not easily calculated.

Such vast projects and pretensions pursued by such unexampled means are full evidence of a plan to acquire an absolute ascendant among nations. The difficulties in the final execution of a plan of this kind are, with many, decisive reasons against its existence.

[1] Such is the account of the transaction received through authentic channels.

But, in the case of ancient Rome, did it not in fact exist, and was it not substantially realized? Does the experience of the past day warrant the opinion that men are not as capable of mad and wicked projects as they were at any former period? Does not the conduct of the French Government display a vastness and sublimation of views, an enormity of ambition, and a destitution of principle which render the supposition of such a design probable? Has not a more rapid progress been made towards its execution than was ever made by Rome in an equal period? In their intercourse with foreign nations, do not the Directory affect an ostentatious imitation of Roman pride and superiority? Is it not natural to conclude that the same spirit points to the same ends? The project is possible. The evidence of its existence is strong, and it will be the wisdom of every other state to act upon the supposition of its reality.

Let it be understood, that the supposition does not imply the intention to reduce all other nations formally to the condition of provinces. This was not done by Rome in the zenith of her greatness. She had her provinces, and she had her allies. But her allies were in fact her vassals. They obeyed her nod. Their princes were deposed and created at pleasure.

Such is the proud pre-eminence to which the ambition of France aspires! After securing as much territory as she thinks it expedient immediately to govern, after wresting from Great Britain and attaching to herself the command of the sea, after despoiling Spain of the riches of Mexico and Peru, after attaining by all these means to a degree of strength sufficient to

defy and awe competition, she may be content, under the modest denomination of allies, to rule the rest of the world by her frown or her smile.

The character of the actual Directory of France justifies the imputation to them of any project the most extravagant and criminal. Viewed internally, as well as externally, their conduct is alike detestable. They have overturned the constitution, which they were appointed to administer, with circumstances of barefaced guilt that disgrace a revolution, before so tarnished as seemed scarcely to admit of greater degradation, and have erected in its stead a military despotism, clothed but not disguised with the mere garb of the constitution which they have abolished. In the accomplishment of this usurpation, they have assassinated one of their colleagues [1] and seized and banished another, together with all those members of the two councils who were disposed and able to combat their pernicious aims. They have done more; not content with rendering themselves masters of the two councils, and converting them into the mere pageants of national representation, they have thought it proper to secure their own power by exiling or imprisoning such private citizens as they feared might promote the future election of men hostile to their views, on the futile pretence of a counter-revolutionary plot, to be effected by *royalizing* the elections. Thus have they not only monopolized all the power for the present, but they have made provisions

[1] Carnot, as was reported at the time, and as is confirmed by nothing having been since heard of him. He had been too deeply in the secrets of the violent party. It was necessary to silence him.

for its perpetuation, so long at least as the Prætorian bands will permit.

No impartial man can doubt that the plot charged upon the exiled members is a forgery. The characters of several of the accused belie it. Barthelemy and Pichegru are virtuous men. The former has long merited and possessed this character. The latter has given numerous proofs of a good title to it; his only fault seems to have been that of enthusiasm in the worst of causes. Neither of them, like *Dumourier*, had been, from his entrance on public life, marked out as the votary of an irregular ambition. The alleged object of the plot, as to such men, from the circumstances of the conjuncture, was wholly improbable; nothing like satisfactory proof has come to light. But the decisive argument of their innocence is that the usurpers did not dare to confront them with a fair legal accusation and trial. It was so clearly their interest and policy to have justified themselves by establishing the guilt of the accused, if in their power, that the omission to attempt it is the demonstration of its impossibility. Having all authority in their own hands, and the army at their devotion, they had nothing to fear from the pursuit; and they must have foreseen that the banishment without trial would finally marshal public opinion against them. There can be little doubt that the people of France at this moment regard with compassion and regret the banished directors and deputies, and with horror and detestation the authors of their disgrace. But the people of France internally are annihilated; to their liberty and happiness this last usurpation gave a

more fatal blow than any or all of the former. It has more of system in it, been less sanguinary, and is less likely to provoke resistance from despair.

The inference from the transaction is evident. The real crime of the banished was the desire of arresting the mad career of the Directory, and of restoring peace to France, in the hope that peace might tend to settle the government on the foundation of order, security, and tranquillity. The majority of the Directory foresaw that peace would not prove an element congenial with the duration of their power; or perhaps, under the guidance of Sieyès, the conjurer of the scene, they judged it expedient to continue in motion the revolutionary wheel till matters were better prepared for creating a new *dynasty* and a new *aristocracy* [1] to regenerate the exploded monarchy of France with due regard to their own interest.

Thus we perceive that the interior conduct of the Directory has the same characters with their exterior —the same irregular ambition, the same contempt of principle, the same boldness of design, the same temerity of execution. From such men what is not to be expected? The development of their recent conduct towards the United States will no doubt confirm all the inferences to be drawn from other parts of the portrait, and will contribute to prove that there is nothing too abandoned or too monstrous for them to meditate or attempt.

Who that loves his country, or respects the dig-

[1] There is good evidence that this, at bottom, is the real plan of the Abbé Sieyès, and some of the most influential in the executive department are his creatures.

nity of his nature, would not rather perish than subscribe to the prostration of both before such men and such a system? What sacrifice, what danger is too great to be incurred in opposition to both? What security in any compromise with such unprincipled men? What safety, but in union, in vigor, in preparation for every extremity; in a decisive and courageous stand for the rights and honor of our injured and insulted country?

TITUS MANLIUS.

V

April 16, 1798.

To estimate properly the conduct of revolutionary France towards the United States, the circumstances which have reciprocally taken place must be viewed together. It is a *whole*, not a *part*, which is to be contemplated. A rapid summary, nevertheless, of the most material is all that can be presented.

Not only the unanimous good wishes of the citizens of this country spontaneously attached themselves to the revolution of France in its first stages, but no sooner was the change from monarchy to a republic officially announced, than our government, consulting the principles of our own revolution, and the wishes of our citizens, hastened to acknowledge the new order of things. This was done to the last minister sent by Louis the XVIth, before the arrival of the first envoy from the republic. Genet afterwards came; his reception by the government was cordial—by the people, enthusiastic.

The government did not merely receive the minister of the republic, in fact, and defer the obligation of treaties till the contest concerning its establishment had been terminated by success; but giving the utmost latitude to the maxim that real treaties bind nations, notwithstanding revolutions of government, ours did not hesitate to admit the immediate operation of the antecedent treaties between the two countries, though the revolution could not be regarded as yet fully accomplished—though a warrant for a contrary policy might have been found in the conduct of France herself—and though the treaties contained several stipulations which gave to her important preferences relative to war, and which were likely to give umbrage to the powers coalesced against her.

In acknowledging the republic, the United States preceded every other nation. It was not till a long time after, that any of the neutral powers followed the example. Had prudence been exclusively consulted, our government might not have done all that it did at this juncture, when the case was very nearly Europe in arms against France.

But good faith and a regard to consistency of principle prevailed over the sense of danger. It was resolved to encounter it; qualifying the step by the manifestation of a disposition to observe a sincere neutrality, as far as it should consist with the stipulations of treaty. Hence the proclamation of neutrality.

It ought to have no small merit in the eyes of France, that at so critical a period of her affairs, we

were willing to run risks so imminent. The fact is, that it had nearly implicated us in the war on her side, at a juncture when all calculations were against her, and when it was certain she could have afforded us no protection or assistance.

What was the return? Genet came with neutrality on his lips, but war in his heart. The instructions published by himself, and his practice upon them, demonstrate that it was the premeditated plan to involve us in the contest; not by a candid appeal to the judgment, friendship, or interest of our country but by alluring the avarice of bad citizens into acts of predatory hostility, by instituting within our territory military expeditions against nations with whom we were at peace. And when it was found that our Executive would not connive at this insidious plan, bold attempts were made to create a schism between the people and the government, and, consequently, to sow the seeds of civil discord, insurrection, and revolution. Thus began the republic.

It is true that the Girondist faction, having been subverted by that of Robespierre, our complaint of the agent of the former was attended with success. The spirit of vengeance came in aid of the justice of our demand. The offending minister was recalled with disgrace. But Robespierre did not fail in a public speech to give a gentle hint of delinquency in the United States, sufficiently indicating that the authors and the manner were more in fault, in his opinion, than the thing. It was not the expedient to quarrel with us. There was still a hope that a course of things, or more dexterous management,

might embark us in the war, as an auxiliary to France.

The treaties were made by us the criterion of our duty; but as they did not require us to go to war, as France did never even pretend this to be the case, listening to the suggestions, not only of interest, but of safety, we resolved to endeavor to preserve peace. But we were equally resolved to fulfil our real obligations in every respect. We saw without murmur our property seized in belligerent vessels; we allowed to French ships of war and privateers, all the peculiar exclusive privileges in our ports to which they were entitled by our treaties upon fair construction—*upon a construction fully concurred in by the political leader*[1] of the adherents to France; we went further, and gratuitously suffered her to sell her prizes in our country, in contravention, perhaps, of the true principles of neutrality; we paid to her new government the debt contracted by us with the old, not only as fast as it became due, but by an anticipation, which did not give pleasure to her enemies. While our government was faithful, our citizens were zealous. Not content with good wishes, they adventured their property in the furnishing of supplies to an extent that showed, in many cases, the co-operation of zeal with interest.

Our country, our merchants, and our ships, in the gloomy periods of her revolution, have been the organs of succors to France, to a degree which gives us an undoubted title to the character of very useful friends.

[1] Mr. Jefferson.

Reverse the medal. France from the beginning, has violated essential points in the treaties between the two countries. The first formal unequivocal act by either of the belligerent parties, interfering with the rule that "*free ships make free goods*," was a decree of the French convention. This violation has been persisted in, and successive violations added, till they amount to a general war on our commerce.

First, the plea of necessity repelled our feeble and modest complaints of infractions. Next, the plea of delinquencies on our part was called in aid of the depredations which it was found convenient to practise upon our trade. Our refusal to accord privileges not granted by our treaties, but claimed by misconstructions destitute even of plausibility—privileges which would have put us at once in a state of war with the enemies of France; the reciprocal application to them of principles originally established against their remonstrances in favor of France; occasional embarrassments to her privateers, arising from the established forms of our courts, and the necessity of vigilance to frustrate her efforts to entangle us against our will in the war; delays in giving relief in a few instances, rendered unavoidable by the nature of our government, and the great extent of our territory; these were so many topics of bitter accusation against our government, and of insult, as rude as it was unmerited.

Our citizens, in judging whether the accusation was captious or well founded, ought to bear in mind, that most of the transactions on which it was predicated happened under the administration of

Jefferson and Randolph, and, as is well ascertained, with their full assent and co-operation. They will not readily suppose that these very cunning men were the dupes of colleagues actuated by ill-will towards France; but they will discover in this union of opinion, among men of very opposite principles, a strong probability that our government acted with propriety, and that the dissatisfaction of France, if more than a color, was unreasonable.

Hitherto, the progress no less than the origin of our controversy with France exhibits plain marks of a disposition on her part to disregard those provisions in the treaties which it was our interest should be observed by her—to exact from us a scrupulous performance of our engagements, and even the extension of them beyond their true import—to embroil us with her enemies, contrary to our inclination and interest, and without even the allegation of a claim upon our faith—to make unreasonable demands upon the grounds of complaints against us, and excuses to violate our property and rights—to divide our nation, and to disturb our government.

Many of the most determined advocates of France among us appear lately to admit, that previous to the treaty with Great Britain the complaints of France against the United States were frivolous; those of the United States against France, real and serious.

But the treaty with Great Britain, it is affirmed, has changed the ground. This, it is said, has given just cause of discontent to France; this has brought us to the verge of war with our first ally and best

friend; to this fatal instrument are we indebted for the evils we feel, and the still greater which impend over our heads.

These suggestions are without the shadow of foundation. They prove the infatuated devotion to a foreign power of those who invented them, and the easy credulity of those with whom they have obtained currency. The evidence of a previous disposition in France to complain without a cause, and to injure without provocation, is a sufficient comment upon the resentment she professes against the treaty. The partiality or indulgence with which the ill treatment received from her prior to that event was viewed by her decided partisans, is a proof of the facility with which they credit her pretensions and palliate her aggressions.

The most significant of the charges against the treaty, as it respects France, are, that it abandons the rule of free ships making free goods; that it extended unduly the list of contraband articles, and gave color to the claim of a right to subject provisions to seizure; that a treaty of amity with the enemy of France, in the midst of a war, was a mark of preference to that enemy, and of ill-will to her.

The replies which have been given to these charges are conclusive.

As to the first point, the stipulation of two powers to observe between themselves a particular rule in their respective wars—a rule, too, innovating upon the general law of nations—can, on no known or reasonable principle of interpretation, be construed to intend that they will insist upon that rule with all

other nations, and will make no treaty with any, however beneficial in other respects, which does not comprehend it. To tie up the will of a nation, and its power of providing for its own interests, to so immense an extent, required a stipulation in positive terms. In vain shall we seek in the treaty for such a stipulation or its equivalent. There is not even a single expression to imply it. The idea is, consequently, no less ridiculous than it is novel. The contemporary proceedings, legislative and judicial, of our government, show that it was not so understood in this country. Congress even declined to become a formal party to the armed neutrality of which it was the basis; unwilling to be pledged to the coercive maintenance of a principle which they were only disposed to promote by particular acts. It is equally futile to seek to derive the obligation of the United States to adhere to this rule, from the supposition of a change in the law of nations by the force of that league. Neither theory nor practice warrants the attributing so important an effect to a military association, springing up in the war and ending with it, not having had the universal consent of nations, nor a course of long practice to give it a sanction.

Were it necessary to resort to an auxiliary argument, it might be said with conclusive force that France, having before our treaty with Great Britain violated in practice the rule in question, absolved us from all obligations to observe it, if any did previously exist.

As to the second point, it has been repeatedly

demonstrated that the enumeration of contraband in the treaty with Great Britain, is agreeable to the *general* law of nations. But this is a matter from its nature liable to vary according to relative situation, and to be variously modified, not only between different nations, but between one nation and different nations. Thus, in our treaty with Great Britain, some articles are enumerated which are omitted in that with France; in that with France, some articles are inserted which are omitted in that with Britain. But it is, perhaps, the first time that a diversity of this sort has been deemed a ground of umbrage to a third party.

With regard to provisions, the treaty only decides that where by the law of nations they are subject to seizure, they are to be paid for. It does not define or admit any new case. As to its giving color to abuse in this respect, this, if true, would amount to nothing. For, till some abuse has actually happened, and been tolerated to the prejudice of France, there was no cause of complaint. The possibility of abuse from a doubtful construction of a treaty between two powers, is no subject of offence to a third. It is the fact which must govern. According to this indisputable criterion, France has had no cause to complain on this account; for since the ratification of the treaty, no instance of the seizure of provisions has occurred, and it is known that our government protested against such a construction.

Further, the treaty has made no change whatever in the actual antecedent state of things to the disadvantage of France.

Great Britain had, before the treaty, with the sanction of our government, acted upon the principles as to free ships making free goods, and generally, as to the affair of contraband which the treaty recognizes. Nor was that sanction merely tacit, but explicit and direct. It was even diplomatically communicated to the agents of France. If there was any thing wrong, therefore, in this matter, it was chargeable, not upon the treaty, but upon the prior measures of the government, which had left these points mere points of form in the treaty.

The remaining charge against that instrument involves a species of political metaphysics. Neither the theory of writers nor the history of nations will bear out the position, that a treaty of amity between a neutral state and one belligerent party, not granting either succors or new privileges relative to war, not derogatory from any obligation of the neutral state to the other belligerent party, is a cause of umbrage to the latter. There can be no reason why a neutral power should not settle differences or adjust a plan of intercourse beneficial to itself with another power, because this last happens to be at war with a third. All this must be a mere question of courtesy; and might be uncourteous or otherwise according to circumstances, but never a ground of quarrel. If there even might have been want of courtesy in the United States to have entered into a treaty of this sort with the enemy of France, had they volunteered it without cogent motives, there could be none in the particular situation. They were led to the treaty by pre-existing differences,

which had nearly ripened to a rupture, and the amicable settlement of which affected very important interests. No favorable conjuncture for this settlement was to be lost. The settlement, by the usual formulas in such cases, would amount to a treaty of amity.

Thus it is evident that the treaty, like all the rest, has been a mere pretence for ill treatment. But admitting that this was not the case, that it really afforded some cause of displeasure, was this of a nature to admit of no atonement, or of none short of the humiliation of our country? If the contrary must be conceded, it is certain that our government has done all that was possible towards reconciliation, and enough to have satisfied any reasonable or just government.

France, after the treaty, proceeded to inflict still deeper wounds upon our commerce. She has endeavored to intercept and destroy it with all the ports of her enemies. Nor was this the worst. The spoliation has frequently attended our trade with her own dominions—attended with unparalleled circumstances of rapacity and violence.

The diplomatic representative of the French Government to the United States was ordered to deliver to our government a most insulting manifesto, and then to withdraw.

Yet our government, notwithstanding this accumulation of wrongs, after knowing that it had been repeatedly outraged in the person of one minister, condescended to send another specially charged to endeavor to conciliate. This minister was known to unite fidelity to his country with principles

friendly to France and her revolution. It was hoped that the latter would make him acceptable, and that he would be able, by amicable explanations and overtures, to obviate misunderstanding and restore harmony. He was not received.

Though it was very problematical whether the honor of the United States, after this, permitted a further advance, yet the government, anxious if possible to preserve peace, concluded to make another and more solemn experiment. A new mission, confided to three extraordinary ministers, took place. They were all three, in different degrees, men well affected to France and her revolution. They were all men of high respectability, and among the purest characters of our country. Their powers and instructions were so ample as to have extorted, from the most determined opposers of the government in the two houses of Congress, a reluctant approbation in this instance of the President's conduct.

In contempt of the established usage, and of the respect due to us an independent people, with the deliberate design of humbling and mortifying our government, these special and extraordinary ministers have been refused to be received. Admitting all the charges brought against us by France to be well founded, still ministers of that description ought on every principle to have been accredited and conferred with, till it was ascertained that they were not ready to do as much as was expected. Not to pursue this course was to deny us the rank of an independent nation; it was to treat us as Great Britain did while we were yet contending with her for this character.

Instead of this, informal agents, probably panders and mistresses, are appointed to intrigue with our envoys. These, attending only to the earnest wish of their constituents for peace, stoop to the conference. What is the misshapen result?

Money, money, is the burden of the discordant song of these foul birds of prey. Great indignation is at first professed against expressions in the President's speech of May last. The reparation of a disavowal is absolutely due to the honor of the Directory and of the Republic, but it turns out that there is a practicable substitute more valuable. The honor of both, being a marketable commodity, is ready to be commuted for gold.

A douceur of 50,000 pounds sterling for the special benefit of the Directory was to pave the way. Instead of reparation for the spoliations on our commerce exceeding twenty millions of dollars, a loan equal to the amount of them is to be made by us to the French Government. Then perhaps a mode might be settled for the liquidation of the claims of our merchants, to be compensated at some future period. The depredations, nevertheless, were to continue till the treaty should be concluded, which, from the distance between the two countries, must at all events take a great length of time, and might be procrastinated indefinitely at the pleasure of the Directory.

In addition to all this, we must purchase of the Directory, at par, Dutch inscriptions to the amount of thirty millions of florins, and look to the ability of the Batavian Republic to redeem them. Already are

these assignats depreciated to half their nominal value, and in all probability will come to nothing, serving merely as a flimsy veil to the extortion of a further and immense contribution. "Money, a great deal of money," [1] is the cry from the first to the last; and our commissioners are assured that without this they may stay in Paris six months without advancing a step. To enforce the argument they are reminded of the fate of Venice.

At so hideous a compound of corruption and extortion, at demands so exorbitant and degrading, there is not a spark of virtuous indignation in an American breast, which will not kindle into a flame. And yet there are men, could it be believed, vile and degenerate enough to run about the streets to contradict, to palliate, to justify, to preach the expediency of compliance. Such men merit all the detestation of all their fellow-citizens: and there is no doubt that, with time and opportunity, they will merit much more from the offended justice of the laws.

TITUS MANLIUS.

VI

April 19, 1798.

The inevitable conclusion, from the facts which have been presented, is that revolutionary France has been and continues to be governed by a spirit of proselytism, conquest, domination, and rapine. The detail well justifies the position that we may have to contend at our very doors for our independence and liberty. When the wonders achieved by the arms of

[1] Il faut de l'argent—il faut beaucoup de l'argent.

France are duly considered, the possibility of the overthrow of Great Britain seems not to be chimerical. If, by any of those extraordinary coincidences of circumstances which occasionally decide the fate of empires, the meditated expedition against England shall succeed; or if, by the immense expense to which that country is driven, and the derangement of her commerce by the powerful means employed to that end, her affairs shall be thrown into such disorder as may enable France to dictate to her the terms of peace; in either of these unfortunate events the probability is, that the United States will have to choose between the surrender of their sovereignty, the new-modelling of their government according to the fancy of the Directory, the emptying of their wealth by contributions into the coffers of the greedy and insatiable monster, and resistance to invasion in order to compel submission to those ruinous conditions.

In opposition to this it is suggested that the interest of France, concurring with the difficulty of execution, is a safeguard against the enterprise. It is asked, what incentives sufficiently potent can stimulate to so unpromising an attempt? The answer is, the strongest passions of bad hearts—inordinate ambition—the love of domination, that prime characteristic of the despots of France,—the spirit of vengeance for the presumption of having thought and acted for ourselves, a spirit which has marked every step of the revolutionary leaders,—the fanatical egotism of obliging the rest of the world to adapt their political system to the French standard

of perfection—the desire of securing the future control of our affairs by humbling and ruining the independent supporters of their country, and of elevating the partisans and tools of France,—the desire of entangling our commerce with preferences and restrictions which would give to her the monopoly;—these passions, the most imperious,—these motives, the most enticing to a crooked policy, are sufficient persuasives to undertake the subjugation of this country.

Added to these primary inducements, the desire of finding an outlet for a part of the vast armies which, on the termination of the European war, are likely to perplex and endanger the men in power, would be an auxiliary motive of great force. The total loss of the troops sent would be no loss to France. Their cupidity would be readily excited to the undertaking by the prospect of dividing among themselves the fertile lands of this country. Great Britain once silenced, there would be no insuperable obstacle to the transportation. The divisions among us which have been urged to our commissioners as one motive to a compliance with the unreasonable demands of the Directory, would be equally an encouragement to invasion. It would be believed that a sufficient number would flock to the standard of France to render it easy to quell the resistance of the rest. Drunk with success, nothing would be thought too arduous to be accomplished.

It is too much a part of our temper to indulge an overweening security. At the close of our revolution war, the phantom of perpetual peace danced

before the eyes of everybody. We see at this early period with how much difficulty war has been parried, and that with all our efforts to preserve peace, we are now in a state of partial hostility. Untaught by this experience we now seem inclined to regard the idea of invasion as incredible, and to regulate our conduct by the belief of its improbability. Who would have thought, eighteen months ago, that Great Britain would at this time have been in serious danger of an invasion from France? Is it not now more probable that such a danger may overtake us, than it was then that it would so soon Great Britain?

There are currents in human affairs when events, at other times little less than miraculous, are to be considered as natural and simple. Such were the eras of Macedonian, of Roman, of Gothic, of Saracen inundation. Such is the present era of French fanaticism. Wise men, when they discover symptoms of a similar era, look for prodigies, and prepare for them with foresight and energy.

Admit that in our case invasion is upon the whole improbable; yet, if there are any circumstances which pronounce that the apprehension of it is not absolutely chimerical, it is the part of wisdom to act as if it were likely to happen. What are the inconveniences of preparation compared with the infinite magnitude of the evil if it shall surprise us unprepared? They are lighter than air, weighed against the smallest probability of so disastrous a result.

But what is to be done? Is it not wiser to compound on any terms than to provoke the consequences of resistance?

To do this is dishonor—it is ruin—it is death. Waiving other considerations, there can be no reliance on its efficacy. The example of Portugal teaches us that it is to purchase disgrace, not safety. The cravings of despotic rapacity may be appeased, but they are not to be satisfied. They will quickly renew their force, and call for new sacrifices in proportion to the facility with which the first were made. The situation of France is likely to make plunder for considerable time to come an indispensable expedient of government. Excluding the great considerations of public policy, and bringing the matter to the simple test of pecuniary calculation, resistance is to be preferred to submission. The surrender of our whole wealth would only procure respite, not safety. The disbursements for war will chiefly be at home. They will not necessarily carry away our riches, and they will preserve our honor and give us security.

But, in the event supposed, can we oppose with success? There is no event in which we may not look with confidence to a successful resistance. Though Great Britain should be impolitic or wicked enough (which is hoped to be impossible) to compromise her difficulties with France, to divide the United States according to the insulting threat of the agents of France, still it is in our power to maintain our independence and baffle every enemy. The people of the United States, from their number, situation, and resources, are invincible, if they are provident and faithful to themselves.

The question returns, What is to be done? Shall

we declare war? No; there are still chances to avoid a rupture, which ought to be taken. Want of success must bring the present despots to reason. Every day may produce a revolution which may substitute better men in their place, and lead to honorable accommodation.

Our true policy is, in the attitude of calm defiance, to meet the aggressions upon us by proportionate resistance, and to prepare vigorously for further resistance. To this end, the chief measures requisite are—to invigorate our treasury by calling into activity the principal untouched resources of revenue—to fortify in earnest our chief seaports—to establish founderies, and increase our arsenals—to create a respectable naval force, and to raise with the utmost diligence a considerable army. Our merchant vessels ought to be permitted not only to arm themselves, but to sink or capture their assailants. Our vessels of war ought to cruise on our coast and serve as convoys to our trade. In doing this, they ought also to be authorized not only to sink or capture assailants, but likewise to capture and bring in privateers found hovering within twenty leagues of our coast. For this last measure, precedent, if requisite, is to be found in the conduct of neutral powers on other occasions.

This course, it will be objected, implies a state of war. Let it be so. But it will be a limited, a mitigated state of war, to grow into a general war or not at the election of France. What may be that election will probably depend on future and incalculable events. The continuation of success on the part of France would insure war. The want of it might

facilitate accommodation. There are examples in which states have been for a long time in a state of partial hostility without proceeding to general rupture. The duration of this course of conduct on our part may be restricted to the continuance of the two last decrees of France: that by which the trade of neutrals with the ports of her enemies has been intercepted, and that by which vessels and their cargoes composed in whole or in part of British fabrics, are liable to seizure and condemnation.

The declared suspension of our treaties with France, is a measure of evident justice and necessity. It is the natural consequence of a total violation on one side. It would be preposterous to be fettered by treaties, which are wholly disregarded by the other party. It is essentially our interest to get rid of the guaranty in the treaty of alliance, which, on the part of France, is likely to be henceforth nugatory; on the part of the United States, is a substantial and dangerous stipulation, obliging them in good faith to take part with France in any future defensive war in which her West India colonies may be attacked. The consular convention is likewise a mischievous instrument, devised by France in the spirit of extending her influence into other countries, and producing to a certain extent *imperium in imperio.*

It may be happy for the United States that an occasion has been furnished by France in which with good faith they may break through these trammels; readjusting, when reconciliation shall take place, a basis of connection or intercourse more convenient and more eligible.

The resolution to raise an army, it is to be feared, is that one of the measures suggested which will meet with the greatest obstacles, and yet it is the one which ought to unite opinion. Being merely a precaution for internal security, it can in no sense tend to provoke war; and looking to eventual security in a case which, if it should happen, would threaten our very existence as a nation, it is the most important.

The history of our revolution war is a serious admonition to it. The American cause had nearly been lost for want of creating, in the first instance, a solid force commensurate in duration with the war. Immense additional expense and waste and a variety of other evils were incurred, which might have been avoided.

Suppose an invasion, and that we are left to depend on militia alone, can it be doubted that a rapid and formidable progress would, in the first instance, be made by the invaders? Who can answer what dismay this might inspire, how far it might go to create general panic, to rally under the banners of the enemy the false and the timid? The imagination cannot, without alarm, anticipate the consequences. Prudence commands that they shall be guarded against. To have a good army on foot will be the best of all precautions to prevent, as well as to repel, invasion.

The propriety of the measure is so palpable that it will argue treachery or incapacity in our councils, if it be not adopted. The friends of the government owe it to their own characters to press it; its opposers can give no better proof that they are not

abandoned to a foreign power, than to concur in it. The public safety will be more indebted to its advocates than to the advocates of any other measure, in proportion as our independence and liberty are of more consequence than our trade.

It is the fervent wish of *patriotism* that our councils and nation may be united and resolute. The dearest interests call for it. A great public danger commands it. Every good man will rejoice to embrace the adversary of his former opinions, if he will now by candor and energy evince his attachment to his country. Whoever does not do this, consigns himself to irrevocable dishonor. But it is not the triumph over a political rival which the true lover of his country desires—it is the safety and the welfare of that country; and he will gladly share with his bitterest opponent the glory of defending and preserving her. Americans, rouse—be unanimous, be virtuous, be firm, exert your courage, trust in Heaven, and nobly defy the enemies both of *God* and *man!*

TITUS MANLIUS.

VII

April 21, 1798.

The dispatches from our envoys have at length made their appearance.[1] They present a picture of the French Government exceeding in turpitude whatever was anticipated from the previous intimations of their contents. It was natural to expect that the perusal of them would have inspired a universal

[1] They were sent in to Congress April 3d.

sentiment of indignation and disgust; and that no man calling himself an American would have had the hardihood to defend or even to palliate a conduct so atrocious. But it is already apparent that an expectation of this kind would not have been well founded.

There are strong symptoms that men in power in France understand better than ourselves the true character of their faction in this country, at least of its leaders; and that as to these, the agents who conferred with our envoys were not mistaken in predicting that the unreasonableness of the demands upon us would not serve to detach the party from France, or to reunite them to their own country. The high-priest of this sect, with a tender regard for the honor of the immaculate Directory, has already imagined several ingenious distinctions to rescue them from the odium and corruption unfolded by the dispatches. Among these is the suggestion that there is no proof of the privity of the Directory—all may have been the mere contrivance of the Minister for Foreign Relations.

The presumption from so miserable a subterfuge is, that had the propositions proceeded immediately from the Directory, the cry from the same quarter would have been—there is no evidence the council or nation approved of them; they, at least, are not implicated; the friendship of the two republics ought not to be disturbed on account of the villany of the transitory and fugitive organs of one of them. The inventor of the subterfuge, however, well knew that the executive organ of a nation never comes forward

in person to negotiate with foreign ministers; and that unless it be presumed to direct and adopt what is done by its agents, it may always be sheltered from responsibility or blame. The recourse to so pitiful an evasion, betrays in its author a systematic design to excuse France at all events—to soften a spirit of submission to every violence she may commit—and to prepare the way for implicit subjection to her will. To be the proconsul of a despotic Directory over the United States, degraded to the condition of a province, can alone be the criminal, the ignoble aim of so seditious, so prostitute a character.

The subaltern mercenaries go still further. Publications have appeared, endeavoring to justify or extenuate the demands upon our envoys, and to inculcate the slavish doctrine of compliance. The United States, it is said, are the aggressors, and ought to make atonement. France assisted them in their revolution with loans, and they ought to reciprocate the benefit; peace is a boon worth the price required for it, and it ought to be paid. In this motley form our country is urged to sink, voluntarily and without a struggle, to a state of tributary vassalage. Americans are found audacious and mean enough to join in the chorus of a foreign nation, which calls upon us to barter our independence for a respite from the lash.

The charge of aggression upon the United States is false; and if true, the reparation, from the nature of the case, ought not to be pecuniary. This species of indemnification between nations is only proper where there has been pecuniary injury.

The loans received by us from France were asked as

a favor, on condition of reimbursement by the United States; and were freely granted for a purpose of mutual advantage. The advances to be made by us were exacted as the price of peace. Though in name loans, they would be in fact contributions, by the coercion of a power which has already wrested from our citizens an immense property, for which it owes to them compensation.

To pay such a price for peace, is to prefer peace to independence, and the nation which becomes tributary takes a master.[1] Peace is doubtless precious, but it is a bauble compared with national independence, which includes national liberty. The evils of war to resist such a precedent are insignificant, compared with the evils of the precedent. Besides that, there could be no possible security for the enjoyment of the object for which the disgraceful sacrifice was made. To disguise the poison, misrepresentation is combined with sophistry. It is alleged that finally no more was asked than that the United States should purchase sixteen millions of Dutch inscriptions, and that by doing this, they would have secured compensation to their citizens for depredations on their trade to four times the amount, with an intermission of the depredations; that no hazard of ultimate loss could have attended the operation, because

[1] The argument of what has been done in the cases of Algerines and Indians, has nothing pertinent but in the comparison of relative ferocity. In this view the claim of the Directory is indisputable; but in every other it is preposterous. It is the general practice of civilized nations to pay barbarians; there is no point of honor to the contrary. But between civilized nations, the payment of tribute by one to another, is, by the common opinion of mankind, a badge of servitude.

the United States owed the Dutch a much larger sum, which would be a pledge for payment or discount.

This is a palpable attempt to deceive. The first propositions were such as have been represented in a former paper; but it appears in the sequel that the French agents, seeing the inflexible opposition of our envoys to their plan, and hoping to extort finally a considerable sum, though less than at first contemplated, relaxed so far in their demands, as to narrow them down to the payment of a douceur of twelve hundred thousand livres, with a positive engagement to advance to the French Government a sum equal to the amount of the spoliations of our trade, and a further engagement to send to our government for power to purchase of France thirty-two millions of the inscriptions (12,800,000 dollars); in return for all which, our envoys were to be permitted to remain six months in Paris, depredations on our trade during that time were to be suspended, and a commission of five persons was to be appointed to liquidate the claims for past depredations, which were to be satisfied "in a *time* and *manner* to be agreed upon." The substance of these demands is to pay absolutely twenty millions of dollars more than the estimated amount of the spoliations; for what? Barely for the acknowledgment of a debt due to our citizens, which, without it, is not the less due, and for the suspension of *hostilities* [1] for six months.

Afterwards, in a conversation between the French

[1] It is observable that the French give themselves the denomination of *hostilities* to their depredations upon us. Our Jacobins would have us consider them as gentle caresses.

minister himself and one of our envoys, the propositions assumed another form. The United States were required to purchase of France, at par, sixteen millions of inscriptions, *and to promise further aid when in their power*. This arrangement being first made, and not before, France was to take measures for reimbursing the equitable demands of our citizens on account of captures.

The purchase of the inscriptions was to be a preliminary. The arrangement for reimbursing our merchants was to follow. The nature of it was not explained; but it is to be inferred from all that preceded that the expedient of the advance of an equal sum by the United States would have been pressed as the basis of the promised arrangement. This last proposal was in its principle as bad as either of the former; its tendency, worse. The promise of future assistance would have carried with it the privilege to repeat at pleasure the demand of money, and to dispute with us about our ability to supply; and it would have embarked us as an *associate* with France in the war. It was to promise her the most effectual aid in our power, and that of which she stood most in need.

The scheme of concealment was a trick. The interest of France to engage us in the war against Great Britain, as a means of wounding her commerce, is too strong to have permitted the secret to be kept by her. By the ratification of the treaty, in which the Senate must have concurred, too many would have obtained possession of the secret to allow it to remain one. While it did, the apprehension of discovery would have enabled France to use it as an engine of

unlimited extortion. But a still greater objection is, that it would have been infamous in the United States thus covertly to relinquish their neutrality, and with equal cowardice and hypocrisy to wear the mask of it, when they had renounced the reality.

The idea of securing our advances, by means of the debt which we owe to the Dutch, is without foundation. The creditors of the United States are the *private citizens* of the Batavian Republic. Their demands could not be opposed by a claim of our government upon their government. The only shape in which it could be attempted must be in that of reprisals for the delinquency of the government. But this would not only be a gross violation of the principle, it would be contrary to *express* stipulations in the contracts for the loans.[1]

In the same spirit of deception it has also been alleged that our envoys, by giving the douceur of twelve hundred thousand livres, and agreeing to send for powers to make a loan, might have obtained a suspension of depredations for six months. There is not a syllable in the dispatches to countenance this assertion. A large advance in addition, either on the basis of the spoliations, or by way of purchase of the inscriptions, is uniformly made the condition of suspending hostilities.

Glosses so false and insidious as these, in a crisis of such imminent public danger, to mislead the opinion of our nation concerning the conduct and views of a foreign enemy, are shoots from a pernicious trunk.

[1] They all provide against seizure or sequestration by way or reprisals, etc.

Opportunity alone is wanting to unveil the treason which lurks at the core.

What signifies the quantum of the contribution had it been really as unimportant as it is represented? 'T is the principle which is to be resisted at every hazard. 'T is the pretension to make us tributary, in opposition to which every American ought to resign the last drop of his blood.

The pratings of the Gallic faction at this time remind us of those of the British faction at the commencement of our revolution.

The insignificance of a duty of three pence per pound on tea was echoed and re-echoed as the bait to an admission of the right to bind us in all cases whatsoever.

The tools of France incessantly clamor against the treaty with Britain as the just cause of the resentment of France. It is curious to remark, that in the conferences with our envoys this treaty was never once mentioned by the French agents. Particular passages in the speech of the President are alone specified as a ground of dissatisfaction. This is at once a specimen of the fruitful versatility with which causes of complaint are contrived, and of the very slight foundations on which they are adopted. A temperate expression of sensibility at an outrageous indignity, offered to our government by a member of the Directory, is converted into a mortal offence. The tyrants will not endure a murmur at the blows they inflict. But the dispatches of our envoys, while they do not sanction the charge preferred by the Gallic faction against the treaty, confirm a very serious

charge which the friends of the government bring against that faction. They prove by the unreserved confession of her agents, that France places absolute dependence on this party in every event, and counts upon their devotion to her as an encouragement to the conditions which they attempt to impose. The people of this country must be infatuated indeed, if after this plain confession they are at a loss for the true source of the evils they suffered, or may hereafter suffer from the despots of France. 'T is the unnatural league of a portion of our citizens with the oppressors of their country.

TITUS MANLIUS.

DETECTOR [1]

1798.

Every day brings fresh confirmations of the truth of the prediction to our envoys that the French faction in America would go all lengths with their imperious and unprincipled masters. It is more and more evident that as many of them as may dare will join the standard of France if once erected in this country. After all that has happened, there is no other solution of the indefatigable and malignant exertions which they are making to propagate disaffection to our own government, and to justify or extenuate the conduct of France. The authors of these exertions understand too well the human heart

[1] This paper, now first printed from the Hamilton MSS. (Vol. XV., p. 101), is an elaborate examination of the X. Y. Z. correspondence. It is in the same line as the preceding essays of *The Stand*, and must have followed them closely in point of time.

not to know, that ideas which have once taken deep root in a community, and have enlisted its passions against one object and in favor of another, cannot suddenly be changed; and that in the event of an invasion they could not, if so disposed, prevent their followers from acting in conformity with the strong bias which had been previously given to their feelings. They know this so well that if they were not in their hearts more *Frenchmen* than *Americans;* if they were not ready in the gratification of ambition, vanity, or revenge, or in compliance with the wages of corruption, to immolate the independence and welfare of their country at the shrine of France * * * they would not, as they do, pursue a conduct which they cannot be insensible leads to that fatal result. Their pride, if not their patriotism, would prevent them. Openly claimed by a foreign government as its obsequious tools, the jealousy of their own honor would prompt them to be forward in giving the lie to a claim to them so pregnant with ignominy. That this has not been the effect, is a convincing proof that they have embarked beyond the power of retreat. It affords a presumption that they are in a situation which leaves them no longer wills of their own. It is astonishing to observe, that they not only do not contradict the charge by their actions, but seem little, if at all, solicitous to disavow it in their language. And in the measures which they advocate, with an effrontery unequalled, under similar circumstances, in the history of any nation, they display unequivocally their prostitute devotion to the enemies of their country.

A principal expedient employed by these men to second the views of the French Government, and counteract the salutary impressions on the public mind, which its abominable treatment of us is calculated to produce, is to inculcate that our envoys, in the conferences they have communicated, have been the dupes of unauthorized and swindling impostors, and that our government, in publishing these dispatches, has been actuated by a desire to make the circumstance subservient to a long premeditated design of rupture with France.

The French account of a transaction in which the despots of France have violated a right of nations sacred among savages as well as civilized men, by imprisoning the Ambassador of Portugal, is pressed into the service of the infamous scheme of defaming our own government and vindicating those despots. This account represents the Portuguese Minister as having been deceived into the advance of a large sum of money, as a bribe to three of the Directory, by pretended agents of the French Government, which, coming to light through the channel of the French Minister at the Court of Portugal, occasioned the imprisonment of the Portuguese Ambassador and several of the pretended agents. And it is alleged that a like imposition has, in all probability, been practised upon our envoys.

What may appear to be the real nature of the transaction in question can only be judged of when the Portuguese Government, free from the dread of France, shall have told its story; when, if ever, the imprisoned Minister shall be at liberty to explain

the grounds of the confidence which he reposed in the agents to whom the money was advanced. Till then all judgment of the true complexion of the affair must be suspended.

In the meantime the character of bold iniquity which the Directory have so eminently earned, authorizes the supposition that the agents now disavowed were really agents of the government—that they actually received the bribe for the Directory; that these, deeming it expedient afterwards to disappoint the expectation given to Portugal, found it necessary to disclaim the inducement, and as a color to their ill-faith, and a shield against the infamy of the proceeding, to imprison the Minister and the inferior agents. The present rulers of France have soared to so stupendous a height of profligacy that the diminutive vices of other men afford no standard by which to judge of their conduct—no clue to the mysterious labyrinth of their complicated crimes.

There are even circumstances to countenance the supposition of this double plot. It is stated that Wascowitch, one of the persons disavowed and seized, was apparently in close connection with *Beaumarchais;* was in "*ostensible familiarity with government men,*" and had actually had communication with a *real agent of government for the purpose of discovering the views of newly-arrived foreign envoys.* And it appears that *Beaumarchais* is not among the persons seized.

It may serve as an index to the affair to understand that *Beaumarchais* is one of the most cunning and intriguing men of Europe; that he was employed

under the royal government as a secret confidential agent, in which capacity he acted between the United States and France, before the acknowledgment of our independence, and that he is known to be in intimate connection with the present French Minister for Foreign Relations.

In the capacity of confidential agent a considerable part of the monies advanced by France for the use of the United States passed through his hands. There was a sum of a million of livres which Dr. Franklin, in the carelessness of confidence, acknowledged to have been received, of which the application could not be traced. When inquiry on behalf of our government was made of the French Minister concerning the appropriation of this million, the only answer to be obtained was that it was a "*secret du cabinet.*" But the Revolution has unravelled this secret. During the reign of Robespierre, *Beaumarchais* was in disgrace and a fugitive. The ministry of that period, not scrupling to unveil the corruptions of the old government, charged the receipt of the missing million upon *Beaumarchais*, and furnished a copy of *the receipt which he is alleged to have given for it.*

This transaction proves that *Beaumarchais*, besides being the confidential political agent of the then administration of France, was the instrument or accomplice of its cupidity. What but the participation of the Minister in a scheme of embezzlement could have induced him to make a *cabinet secret* of the application of this million?

Who a more likely, a more fit instrument of the avidity of the present government than this same

Beaumarchais? When men apparently in close connection with him take bribes from foreign ministers, professedly for the use of the Directory, what more probable than that they are truly for that use—that *Beaumarchais* is the link between the Directory and the ostensible agents?

If afterwards expedient or necessary to disavow, what more easy to be managed? *Beaumarchais* is no doubt too adroit to transact such business in a manner that can admit of proof of his agency. If inculpated by his agents he has only boldly to deny the charge and to treat it as a part of the imposture. The all sufficient patronage of the Directory could not fail to ensure credit to his denial and to shield him from detection.

In such a case the appearances to be expected are exactly such as occur in the present affair. The immediate and chief agent goes untouched. The subalterns are consigned to punishment, real or *seeming*. The semblance of punishment may even be a thing understood all round. As yet nothing more than imprisonment is known to have taken place; and it is very possible that final impunity may attend *Wascowitch* and his colleagues; though from the character of the *Directory*, if necessary to their purposes, they would find no difficulty in the sacrifice of these men, by hurrying them to the guillotine after a mock-trial, or by giving them, like *Carnot*, a secret passport to the other world.

If it be true, as we are told, that France has suspended the project of invading Portugal, and is in negotiation with her under the auspices of Spain, it

is very possible that the precautions of the Portuguese Minister to establish the participation of the Directory were better than was at first suspected, and that the apprehension of having the affair seriously probed may obtain for Portugal a suspension from Ruin.

This comment upon the affair is justified by the facts *ascertained* in our case. The participation of the French Minister for Foreign Relations in the propositions of the secret agents to our envoys admits of no question. To be convinced of these we have only to compare the declarations and proposals of the agents with those of the Minister himself.

In the communications of those agents the leading ideas are that the Directory were greatly incensed at some passages in the *President's speech;* that *reparation* must be made for them; that money *might be a substitute* for other reparation; that this money was *to be offered* by our envoys, and to serve as *pocket-money*, as a *gratuity*, for the Directory; and that in addition to it there must be a loan to *the republic*, in the shape of purchase of Dutch rescriptions, or in some other shape. The gratuity to be about £50,000 sterling.

The same ideas substantially appear in the conference with Talleyrand himself.

As a criterion of this it is in the first place to be observed that these agents originally suggested the *bribe* or *gratuity*, contradistinguished from the *loan*, as a *substitute* for other *reparation* to the Directory for a pretended insult in the President's speech. In the conference between the Minister *Talleyrand* and one

of our envoys of the 28th of October, the same idea is distinctly marked; so as to evince a concert [1] not only in substance but in circumstances between the Minister and the agents. They began their conferences by stating the umbrage taken by the Directory at the President's speech, the necessity of reparation for it, and the possibility of commuting that reparation for money *to be offered* by our envoys. The Minister, treading in their steps, began the conference [2] by observing that the Directory had passed an *arrêt*, in which they had demanded of the envoys an *explanation* of some parts and *reparation* for other parts of the President's speech to Congress; that he was sensible difficulties would exist on the part of the envoys relative to this demand, but that by *their offering money* he thought he could prevent the effect of the *arrêt*.

The characteristic features in both cases are—*offence* given by the speech, *reparation* to be demanded by the Directory, and a *commutation* of the required reparation for *money*. The only difference is that the agents call this *pocket-money* for the Directory a gratuity, etc., while the Minister gives it no specific name or designation. But we discover still more clearly from what follows that he means the same thing with the agents. The envoy having answered that he and his colleagues had no power to make a loan, but could send one of their number for instructions on the proposition, if deemed expedient, provided that the other objects of the negotiation could

[1] See Exhibit C., Dec. 13th.

[2] See dispatch commencing the 27th of October, 1797.

be discussed and adjusted, Talleyrand replied that this matter *about the money* might be settled *directly without sending to America;* that he would not communicate the *arrêt* for a week, and that if the envoys could adjust the difficulty with respect to the *speech* an application would nevertheless go to the United States for *a loan*. The loan is here manifestly a different thing from the money to be advanced for reparation. The last might be arranged immediately, though the first might wait the issue of an application to the government of this country. The first is plainly the 50,000 sterling for *pocket-money;* the last is the contribution by way of loan to the republic. This coincidence fixes definitively the concert between the Minister and the agents, and traces unequivocally to the former the double demand of a *bribe* and a *loan*. The conclusion is inevitable.

It is also confirmed by what took place on the 17th of December, when one of our envoys mentioned to the Minister that the person designated as *Y* had that morning made him *propositions* (alluding to those for the *gratuity* and *loan*). The Minister replied that the *information which Y had given was just, and might always be relied upon*. This was explicitly to recognize *Y* as his agent and to authorize the giving of credit to his propositions. A quibble has been started on this point. It is pretended that the declaration that the information given by *Y* was just, did not import that the *propositions* he had made were authorized. But besides that it was natural to look for vagueness of expression in so mysterious and so foul a transaction,—as the term *information* was

used in reply to the suggestion that *propositions* had been made, it must necessarily be understood and intend that the *information* which *Y* had given, in reference to the *propositions* spoken of by the envoy, was just and might be relied upon. Again, *information* was the most apt term that could have been employed. *Y* and the other agents professed not to *make propositions*, but to *inform* our envoys what *propositions made by them* were likely to be acceptable.

Such are the wretched shifts to which the factious adherents of France are driven in the attempts to obscure the truth and to mislead their countrymen. Their futility is evident. It is evident that the agents who conferred with our envoys were not impostors but were truly the commissaries of the French minister, and that their most odious propositions were not only sanctioned but even *reiterated* by him. The connection between the Minister and the Directory, from the nature of the thing, can only be inferred from his office and from his personal character. The most circumspect man in the world, it is utterly incredible that he would hazard himself in such a way unless, acting for the Directory, he was assured of their omnipotent support. Whether he be himself a mercenary partaker of the bribes which are extorted, or only the instrument of the rapacity of the Directory to retain his influence with them for the accomplishment of some great ulterior design, must be referred to time, and is of little moment to the United States.

Whatever, then, may have been the case with

respect to the Portuguese Minister, 't is demonstrated that our envoys have not been, as alleged, the dupes of unauthorized agents, but have had the dexterity to ascertain the conception and expression from the mouth of the Minister himself. The probability is that in the other instance likewise the corruption which is now denied did really exist, as it most certainly does in our case; though it is to be looked for that here also it will be denied, and our envoys, if within the grasp of the monsters, made the victims of their fraudulent tyranny. The abject partisans of France, anticipating this result, are preparing the way for its justification.

DETECTOR.

A FRENCH FACTION

1798.

There is a set of men whose mouths are always full of the phrases, British faction—British agents—British influence. Feeling that they themselves are interested in a foreign faction, they imagine that it must be so with every one else, and that whoever will not join with them in sacrificing the interests of their country to another country, must be engaged in an opposite foreign faction; *Frenchmen* in all their feelings and wishes, they can see in their opponents nothing but *Englishmen*. Every true *American*—every really independent man, becomes, in their eyes, a British agent—a British emissary.

The truth is, that there is in this country a decided *French faction*, but no other foreign faction. I speak as to those who have a share in the public councils,

or in the political influence of the country; those who adhered to Great Britain during the revolution may be presumed, generally, to have still a partiality for her. But the number of those who have at this time any agency in public affairs is very insignificant. They are neither numerous nor weighty enough to form in the public councils a distinct faction. Nor is it to this description of men that the passage is applied.

The satellites of France have the audacity to bestow it upon men who have risked more in opposition to Great Britain, than but few of them ever did —to men who have given every possible proof of their exclusive devotion to the interests of their own country. Let facts speak. The leaders of the French faction during the war managed to place the minister of the country abroad in a servile dependence on the ministry of France, and but for the virtuous independence of those men, which led them to break their instructions, it is very problematical we should have had as early, or as good a peace as that we obtained. The same men, during the same period, effected the revocation of a commission which had been given for making a commercial treaty with Great Britain, and again, on the approach of peace, defeated an attempt to produce a renewal of that commission, and thus lost an opportunity known to have been favorable for establishing a beneficial treaty of commerce with that country—though they have since made the obtaining of such a treaty, a pretext for reiterated attempts to renew hostilities with her. The same men have been constantly

laboring, from the first institution of the present government, to render it subservient, not to the advancement of our own manufactures, but to the advancement of the navigation and manufactures of France.

In a proposal which aims at fostering our own navigation and elevating our own manufactures, by giving them advantages over those *of all foreign nations*, a thousand obstacles occur, a thousand alarms are sounded—usurpation of ungranted powers, designs to promote the interests of different parts of the Union at the expense of the other parts of it, and innumerable other spectres are conjured up to terrify us from the pursuit. Is the project to confer particular favors upon the navigation and manufactures of France, even at the expense of the United States?—then all difficulties vanish. This is the true and only object of the Constitution—for this it was framed—by this alone it can live and have a being. To this precious end, we are assured, the States who may particularly suffer will be willing to sacrifice. In this holy cause we are to risk every thing—our trade, our navigation, our manufactures, our agriculture, our revenues, our peace. Not to consent is to want spirit—to want honor—to want patriotism. Thus does Gallicism assume the honorable part of patriotism.

THE WAR IN EUROPE

1799.

Every step of the progress of the present war in Europe has been marked with horrors. If the per-

petration of them was confined to those who are the acknowledged instruments of despotic power, it would excite less surprise; but when they are acted upon by those who profess themselves to be the champions of the rights of man, they naturally occasion both wonder and regret. Passing by the extreme severities which the French have exercised in Italy, what shall we think of the declarations of Jourdan to the inhabitants of Germany?

* * * * * *

Good God! is it a crime for men to defend their own government and country? Is it a punishable offence in the Germans that they will not accept from the French what they offer as liberty at the point of the bayonet? This is to confound all ideas of morality and humanity; it is to trample upon all the rights of man and nations; it is to restore the ages of barbarism; according to the laws and practice of modern war, the peasantry of a country, if they remain peaceably at home, are protected from other harm than a contribution to the necessities of the invading army. Those who join the armies of their country and fight with them, are considered and treated as *other soldiers*. But the present French doctrine is, that they are to be treated as *rebels* and *criminals*.

German *patriotism* is a heinous offence in the eyes of French patriots. How are we to solve this otherwise than by observing that the French are influenced by the same spirit of domination which governed the ancient Romans. They considered themselves as having a right to be the masters of the world, and to

treat the rest of mankind as their vassals. How clearly is it proved by this that the praise of a civilized world is justly due to Christianity;—war, by the influence of the humane principles of that religion, has been stripped of half its horrors. The *French* renounce Christianity, and they relapse into barbarism; — war resumes the same hideous and savage form which it wore in the ages of Gothic and Roman violence.

ALLEGORICAL DEVICE

1799.

A globe, with Europe and part of Africa on one side, America on the other, the Atlantic between. The portion occupied by America to be larger than that occupied by Europe. A Colossus to be placed on this globe, with one foot on Europe, the other extending partly over the Atlantic toward America; having on his head a quintuple crown, in his right hand an iron sceptre, projecting, but broken in the middle; in his left hand a *pileus* (cap of liberty) reversed; the staff entwined by a snake with its head downward, having the staff of the *pileus* in its mouth, and folding in its tail (as if in the act of strangling) a label with the words "Rights of Man." Upon a base supported by fifteen columns erected on the continent of America, the genius of America to be placed, represented by the figure of *Pallas*—a female in armor, with a firm, composed countenance, a golden breastplate, a spear in her right hand, and an ægis or shield in her left, having upon it the scales of

justice (instead of the Medusa's head); her helmet encircled with wreaths of olive, her spear striking upon the sceptre of the Colossus and breaking it asunder; over her head a radiated crown of glory. It would improve the allegory to represent the Atlantic in a tempest, as indicative of rage, and Neptune in the position of aiming a blow at the Colossus with his trident.

Explanation.—It is known that the globe is an ancient symbol of universal dominion. This, with the Colossus, alluding to the French Directory, will denote the project of acquiring such dominion—the position of the Colossus signifying the intent to extend it to America. The Colossus will represent the French Republic; and *Pallas*, as the genius of America, will intimate that though loving peace as a primary object (of which the olive-wreath is the symbol), yet, guided by *wisdom* and justice, America successfully exerts her valor to break the sceptre of the tyrant.

PERICLES [1]

(For the *Evening Post.*)

1803.

Since the question of independence, none has occurred more deeply interesting to the United States than the cession of Louisiana to France.

[1] Reprinted from the *History of the Republic*, by John C. Hamilton, and now first included with Hamilton's writings.

It is a very interesting paper, as it shows how completely Hamilton parted with his party on the Louisiana question and how unswervingly national he was in every thing.

This event threatens the early dismemberment of a large portion of the country; more immediately, the safety of all the Southern States; and remotely, the independence of the whole Union. This is the portentous aspect which the affair presents to all men of sound and reflecting minds, of whatever party; and it is not to be concealed, that the only question which now offers itself, is how the evil is to be averted?

The strict right to resort at once to war, if it should be deemed expedient, cannot be doubted. A manifest and great danger to the nation; the nature of the cession to France, extending to ancient limits without respect to our rights by treaty; the direct infraction of an important article of the treaty itself, in withholding the deposit of New Orleans: either of these affords justifiable cause of war, and that they would authorize immediate hostilities, is not to be questioned by the most scrupulous mind.

The whole is then a question of expediency. Two courses only present: First, to negotiate, and endeavor to purchase; and if this fails, to go to war. Secondly, to seize at once on the Floridas and New Orleans, and then negotiate. A strong objection offers itself to the first. There is not the most distant probability that the ambitious and aggrandizing views of Buonaparte will commute the territory for money. Its acquisition is of immense importance to France, and has long been an object of her extreme solicitude. The attempt, therefore, to purchase, in the first instance, will certainly fail; and in the end, war must be resorted to, under all the

accumulation of difficulties caused by a previous and strongly fortified possession of the country by our adversary.

The second plan is, therefore, evidently the best. First, because effectual; the acquisition easy; the preservation afterwards easy. The evils of a war with France at this time are certainly not very formidable: her fleet crippled and powerless; her treasury empty; her resources almost dried up; in short, gasping for breath after a tremendous conflict, which, though it left her victorious, left her nearly exhausted under her extraordinary exertions. On the other hand, we might count with certainty on the aid of Great Britain with her powerful navy.

Secondly, this plan is preferable, because it affords us the only chance of avoiding a long-continued war. When we have once taken possession the business will present itself to France in a new aspect. She will then have to weigh the immense difficulties, if not the utter impracticability, of wresting it from us. In this posture of affairs she will naturally conclude it is her interest to bargain. Now it may become expedient to terminate hostilities by a purchase, and a cheaper one may reasonably be expected. To secure the better prospect of final success, the following auxiliary measures ought to be adopted. The army should be increased to ten thousand men, for the purpose of insuring the preservation of the conquest. Preparations for increasing our naval force should be made. The militia should be classed, and effectual provision made for raising, on an emergency, forty thousand men. Negotiations should be pushed with

Great Britain, to induce her to hold herself in readiness to co-operate fully with us, at a moment's warning. This plan should be adopted and proclaimed before the departure of our envoy. Such measures would astonish and disconcert Buonaparte himself; our envoy would be enabled to speak and treat with effect, and all Europe would be taught to respect us. These ideas have been long entertained by the writer, but he has never given himself the trouble to commit them to the public, because he despaired of their being adopted. They are now thrown out with very little hope of their producing any change in the conduct of the Administration, yet with the encouragement that there is a strong current of public feeling in favor of decisive measures. If the President would adopt this course, he might yet retrieve his character, induce the best part of the community to look favorably upon his political career, exalt himself in the eyes of Europe, save the country, and secure a permanent fame. But, for this, alas! Jefferson is not destined.

PERICLES.

THE WHISKEY REBELLION

THE WHISKEY REBELLION

HAMILTON TO WASHINGTON [1]

TREASURY DEPARTMENT, September 1, 1792.

SIR:—I have the honor to inclose sundry papers which have been handed to me by the Commissioners of the Revenue, respecting the state of the excise law in the Western Survey of the District of Pennsylvania.

[1] This letter, and those which follow, give the history of the whiskey rebellion from the point of view of the Secretary of the Treasury. That first insurrection against the government is an important chapter in the life of Hamilton. It was his system narrowly victorious at the last point which caused the assumption of the State debts as a part of the general financial policy. It was the assumption of the State debts which made an increase of taxation necessary, and for this purpose the excise on spirits was laid. The new tax produced an outburst of resistance in the Alleghany region—that is, in Western Pennsylvania, Virginia, and North Carolina. By the efforts of Washington, and by modifying the law almost to the verge of imprudent concession, the disturbances in Virginia and North Carolina were allayed. But in Pennsylvania matters went from bad to worse, until resistance culminated in open rebellion. Judging in accordance with the best principles of taxation, no one would now question the propriety of the excise. But when the opposition to it became revolt, the affair rose in Hamilton's eyes to something far graver than the successful collection of a certain amount of money. He felt that it was the first sharp test of the value and strength of the government formed under the Constitution, and he knew that if the government prevailed, it would be greatly invigorated. When Washington was satisfied that conciliation had been tried to the last point consistent with safety, he adopted Hamilton's measures, ordered out an overwhelming force, and sent it

Such persevering and violent opposition to the law gives the business a still more serious aspect than it has hitherto worn, and seems to call for vigorous and decisive measures on the part of the government.

I have directed that the supervisor of the district shall repair forthwith to the survey in question, to ascertain in person the true state of the survey; to collect evidences respecting the violences that have been committed, in order to a prosecution of the offenders; to ascertain particulars as to the meeting which appears to have been held at Pittsburgh; to encourage the perseverance of the officers; giving expectations, as far as it can be done with propriety, of indemnification from the government for any losses which they may sustain in consequence of their offices; to endeavor to prevail upon the inhabitants of the county of Alleghany, who appear at present the least refractory, to come into an acquiescence of the law; representing to discreet persons the impropriety of government's remaining a passive spectator of the contempt of its laws.

I shall also immediately submit to the Attorney-General, for his opinion, whether an indictable offence has not been committed by the persons who

against the insurgents. Before this display of energy and vigor the insurrection faded away without bloodshed into ignominy and ridicule. The result was most valuable. There had been a struggle of principles and parties, and the Federal Government had conquered. In the following pages, containing all that Hamilton wrote on the subject, the story of this incident, so important and so full of meaning to our early development as a nation, is told by the principal actor on the side of the Administration.

were assembled at Pittsburgh, and of what nature is the paper which contains their proceedings; with a view, if judged expedient by you, that it may be brought under the notice of the Circuit Court, which, I understand, is to be held in October at Yorktown.

My present clear conviction is, that it is indispensable, if competent evidence can be obtained, to exert the full force of the law against the offenders, with every circumstance that can manifest the determination of government to enforce its execution; and if the processes of the courts are resisted, as is rather to be expected, to employ those means which in the last resort are put in the power of the Executive. If this is not done, the spirit of disobedience will naturally extend, and the authority of the government will be prostrated. Moderation enough has been shown; it is time to assume a different tone. The well-disposed part of the community will begin to think the Executive wanting in decision and vigor. I submit these impressions to your consideration, previous to any step which will involve the necessity of ulterior proceedings; and shall hope as speedily as possible to receive your instructions.

With the highest respect and the truest attachment, I have the honor to be, etc.

HAMILTON TO WASHINGTON

TREASURY DEPARTMENT, September 8, 1792.

SIR:—I have to acknowledge the honor of your letter of the 31st of August.

Letters from the supervisor of North Carolina confirm the representation contained in the letter from the inspector of the 5th survey to you. My letter which accompanies this, suggests the measure which, on mature reflection, has appeared most proper to be taken upon the whole subject of the opposition to the law. If the idea is approved by you, I believe it will be advisable to transmit a copy of the proclamation to the governors of each of the States of South Carolina, North Carolina, and Pennsylvania, calling their attention in a proper manner to the state of affairs within their respective governments.

HAMILTON TO WASHINGTON

TREASURY DEPARTMENT, September 9, 1792.

SIR:—I had the honor of writing to you by the post of Monday last, and then transmitted sundry papers, respecting a meeting at Pittsburgh on the 21st of August, and other proceedings of a disorderly nature in opposition to the laws laying a duty on distilled spirits, and I added my opinion that it was advisable for the government to take measures for suppressing these disorders and enforcing the laws with vigor and decision.

The result of further and mature deliberation is, that it will be expedient for the President to issue a proclamation adverting in general terms to the irregular proceedings, and manifesting an intention to put the laws in force against offenders. The inducements to this measure are:

1. That it is a usual course in like cases, and seems, all circumstances considered, requisite to the justification of the Executive Department. It is now more than fourteen months since the duty in question began to operate. In the four western counties of Pennsylvania, and in a great part of North Carolina, it has never been in any degree submitted to. And the late meeting at Pittsburgh is, in substance, a repetition of what happened last year in the same scene. The disorders in that quarter acquire additional consequence from their being acted in the State which is the immediate seat of government. Hence the occasion appears to be sufficiently serious and of sufficient importance to call for such a procedure.

2. As an accommodating and temporizing conduct has been hitherto pursued, a proclamation seems to be the natural prelude to a different course of conduct.

3. There is considerable danger that before measures can be matured for making a public impression by the prosecution of offenders, the spirit of opposition may extend and break out in other quarters, and by its extension become much more difficult to be overcome. There is reason to hope that a proclamation will arrest it, and give time for more effectual measures.

4. It may even prevent the necessity of ulterior coercion. The character of the President will naturally induce a conclusion, that he means to treat the matter seriously. This idea will be impressive on the most refractory, it will restrain the timid and

wavering, and it will encourage the well disposed. The appearance of the President in the business will awaken the attention of a great number of persons of the last description to the evil tendency of the conduct reprehended, who have not yet viewed it with due seriousness. And from the co-operation of these circumstances good may reasonably be expected.

In either view, therefore, of the propriety of conduct, or the effects to be hoped for, the measure seems to be an advisable one. I beg leave to add, that, in my judgment, it is not only advisable, but necessary. Besides the state of things in the western part of North Carolina, which is known to you, a letter has just been received from the supervisor of South Carolina, mentioning that a spirit of discontent and opposition had been revived in two of the counties of that State bordering on North Carolina, in which it had been apparently suppressed. This shows the necessity of some immediate step of a general aspect, while things are preparing, if unhappily it should become necessary, to act with decision in the western counties of Pennsylvania, where the government, for several obvious considerations, will be left in condition to do it. Decision successfully exerted in one place, will, it is presumed, be efficacious everywhere.

The Secretary of War and Attorney-General agree with me in opinion on the expediency of a proclamation. The draft of one now submitted has been framed in concert with the latter, except as to one or two particulars, which are noted in the margin of the

rough draft in my handwriting, herewith also transmitted. In respect to these, the objections of that gentleman did not appear to me well founded, and would, I think, unnecessarily diminish the force of the instrument.

With the highest respect and truest attachment, I have the honor to be, etc.

HAMILTON TO WASHINGTON

PHILADELPHIA, September 11, 1792.

SIR:—Herewith is an official letter, submitting the draft of a proclamation. I reserve some observations as most proper for a private letter.

In the case of a former proclamation, I observe it was under the seal of the United States, and countersigned by the Secretary of State. If the precedent was now to be formed, I should express a doubt whether it was such an instrument as ought to be under the seal of the United States; and I believe usage, as well in this country under the State governments as in Great Britain, would be found against it; but the practice having been begun, there are many reasons which in this instance recommend an adherence to it, and the form of the attestation is adapted to this idea.

But still, if the Secretary of State should be at so great a distance, or if an uncertainty of his being in the way should involve the probability of considerable delay, it will be well to consider if the precedent ought not to be departed from. In this case, the

attestation will be required to be varied, so as to omit from the words "In testimony" to the words "my hand," inclusively, and to substitute the word "Given" to "Done"; and it may be advisable to direct the Attorney-General to countersign it.

Every day's delay will render the act less impressive, and defeat part of its object.

The propriety of issuing the proclamation depends of course upon a resolution to act in conformity to it, and put in force all the powers and means with which the Executive is possessed, as occasion shall require. My own mind is made up fully to this issue, and on this my suggestion of the measure is founded. Your letter by the last post, confirming former intimations, assures me that you view the matter in the same light.

The words in the proclamation, "dictated by weighty reasons of public exigency and policy," are not essential to the general scope of it. They amount to an *additional commitment* of the President on the question of the merits of the law, and will require to be well considered.

That the proclamation, both as to *manner* and *matter*, will be criticised, cannot be matter of surprise, if it should happen, to any one who is aware of the lengths to which a certain party is prepared to go. It ought to be anticipated as probable.

In a step so delicate and full of responsibility, I thought it my duty to make these observations; though I was sure they would of themselves occur.

It is satisfactory to know that a jury in Chester County convicted a person who was guilty of assault-

ing an officer of inspection. On being interrogated, they answered that they had found him guilty upon the count in the indictment which charged him with assaulting the officer in the execution of his duty; that the law was a constitutional act of government, and was not to be resisted by violence. I have directed Mr. Coxe to collect and publish the particulars. The symptom is a good one.

With the most faithful and affectionate attachment, etc.

HAMILTON TO WASHINGTON.

TREASURY DEPARTMENT, September 22, 1792.

SIR:—I have been duly honored with your letters of the 7th and 17th instant, and perceive with much pleasure a confirmation of the expectation which your former communications had given, that your view of the measures proper to be pursued, respecting the proceedings therein referred to, would correspond with the impressions entertained here.

I flatter myself that the proclamation will answer a very valuable purpose; but every thing which the law and prudence will warrant, will be put in train as circumstances shall indicate, for such eventual measures as may be found necessary. I do not, however, despair that, with a proper countenance, the ordinary course of legal coercion will be found adequate.

The inclosed copy of a letter from the inspector of Kentucky to the supervisor of Virginia, of the 12th of July last, and the copy of a letter from one of his

collectors to him of the 1st of June, contain interesting and, comparatively, not discouraging matter respecting the state of things in that survey.

The supervisor of Virginia, in a letter to the Commissioner of the Revenue, of the 10th instant, expresses himself thus: "I can truly say that the excise is now fairly on its legs in this district; it rests on the good-will of the greater part of the people, and our collectors are from no cause indisposed to the service, but the apprehension of too much business for too little compensation." A letter from Mr. Hawkins (Senator) to Mr. Coxe, announces favorable symptoms in the part of North Carolina which is in the vicinity of his residence.

On the whole, I see no cause of apprehension but that the law will finally go into full operation, with as much good-will of the people as usually attends revenue laws.

With the highest respect and truest attachment, etc.

P. S.—I have the pleasure to transmit herewith a letter from Mr. G. Morris, which was handed to me by Mr. R. Morris. The supervisor has been desired to forward to the Circuit Court at Yorktown such proof as he should be able to collect, addressed to the Attorney-General. It will, I perceive, be satisfactory to that officer to receive your direction to proceed there. His presence is of importance, as well to give weight to what it may be proper to do, as to afford security that nothing which cannot be supported will be attempted. I submit the expediency of a line from you to him.

WASHINGTON TO GOVERNORS OF PENNSYLVANIA AND NORTH AND SOUTH CAROLINA

(CIRCULAR)

Draft by Hamilton.

UNITED STATES, September 29, 1792.

SIR:—Inclosed you will find a copy of a proclamation which I have thought proper to issue, in consequence of certain irregular and refractory proceedings, which have taken place in particular parts of some of the States, contravening the laws therein mentioned.

I feel an entire confidence that the weight and influence of the Executive of ———, will be cheerfully exerted in every proper way, to further the objects of this measure, and to promote on every occasion a due obedience to the constitutional laws of the Union. With respect, I am, sir, etc.

HAMILTON TO WASHINGTON

November 27, 1792.

The Secretary of the Treasury presents his respects to the President. The execution of the process by the marshal himself is, for many reasons, so important, that it does not appear possible to dispense with it. If there should be any failure in the deputy, it would probably furnish a topic of censure and a source of much embarrassment. The impediment in point of health is to be regretted, but, it would seem, must be surmounted.

HAMILTON TO WASHINGTON

TREASURY DEPARTMENT, June 4, 1794.

SIR:

Upon the receipt of the communication to you from the Governor of Pennsylvania, of the 18th of April last, I put that letter and the papers attending it into the hands of the Commissioner of Revenue to examine into the suggestions made, and report to me concerning them.

The result is contained in a letter from that officer, dated the 25th of April (which hurry of business put out of sight), and which is now communicated only for the information of the President, as the case does not seem to require any particular reply to the Governor, nor any act upon the subject; and the exhibition to him of the picture, which I believe is justly drawn, of the conduct of Mr. Addison and others, would perhaps only excite useless irritation.

The removal of either of the officers objected to, after the persecution they have suffered, and the perseverance they have displayed, would be a hazardous step; and a suspicion is warranted by the conduct of the parties, that it may have been recommended with an insidious view. Experience, however, may better explain in a little time, whether any concession on that point will be expedient; in which case, some means of indemnifying the officer or officers who should be removed, would be demanded both by justice and policy.

With perfect respect, etc.

HAMILTON TO WASHINGTON

June 14, 1794.

The Secretary of the Treasury presents his respects to the President. He had thought that the appointment of a supervisor for Pennsylvania might, without inconvenience, be deferred till the return of the President, and therefore deferred mentioning it; but on more particular reflection, as a new revenue year commences with the 1st of July, he believes it would be of use to accelerate the appointment.

The persons who have more particularly occurred to the inquiries of the Secretary (and his inquiries have been particular and extensive), are General Hand, now Inspector; Colonel Henry Miller, of York County; Charles Biddle, of this city; Colonel Francis Nichols; Mr. Clarkson, Mayor; and Major Lennox.

General Hand, from situation, would claim particular consideration; but the Secretary, with much esteem for that gentleman on personal accounts, is obliged in duty to say, that he has been so materially defective in the execution of his present office, as to forbid an assurance that the superior one would be executed by him with due attention and exertion. And it is of vast consequence to the revenue and to the government, that no mistake should be committed in the present choice.

Of the persons named, Col. Miller, all circumstances considered, has the judgment of the Secretary in his favor. All agree that he is a man of good character, of friendly dispositions to the government and laws of the United States, of industry, exertion, *address* and *distinguished* firmness, of adequate though not

superior ability, and most likely, of any man on whom equal dependence can be placed, to have weight in the most refractory scene of this State. He is also a man of decent property, unembarrassed. Among those who warmly recommend him is Mr. Ross, Senator of this State, who lives in one of the most western counties.

Mr. Biddle has many things in his favor. Perhaps he has more ability than any of the persons named, and no doubts are entertained of his firmness, activity, or attention. His connections and influence are principally among the malcontents; but most persons who have been consulted entertain an unfavorable impression of his political principles, and think there is not full assurance that he would not sacrifice the duties of his station and the interests of the government to party considerations. He was named by the *Democratic Society* Vice-President, which he has, it seems, neither accepted nor publicly disavowed. Several attach an idea of cunning and duplicity to the character. *One* good judge of character thinks favorably of his principles, and that reliance may be placed; but the result of a comprehensive inquiry is, that there would be hazard in the appointment, and the case is believed to be one in which nothing ought to be hazarded.

Col. Nichols and Major Lennox stand nearly on a level—both men of adequate understanding, honorable characters, some property, undoubted firmness, and probable exertion; but on the last point there is greater assurance of Major Lennox. But neither of these gentlemen seem to have that extensive

notoriety and popularity of character which is desirable to assist the progress of disagreeable laws. In this particular, Mr. Miller or Mr. Biddle has greatly the advantage.

Mr. Clarkson has several things in his favor; perhaps rather more ability than most of the other persons; but he wants *bodily* activity, which may be a point of consequence; and he is said to be much embarrassed in his circumstances.

The Secretary has committed these remarks to writing, not wishing to intrude on the President today, and desirous of placing the subject immediately before him. If he should conclude on the person before he leaves town, it is requested that he would leave a commission, signed but not *completed*, in order that it may be previously *ascertained* whether Mr. Miller will accept.

Among the persons who have been consulted is the Attorney-General. He gave a preference to Mr. Miller. His knowledge of State characters is diffusive and accurate. Mr. Miller was lately a very promising candidate for the place of *Senator* in the Senate of the United States.

HAMILTON TO WASHINGTON

TREASURY DEPARTMENT, August 2, 1794.

SIR:

In compliance with your requisitions, I have the honor to submit my opinion as to the course which it will be advisable for the President to pursue, in regard to the armed opposition recently given in the four

western counties of Pennsylvania to the execution of the laws of the United States laying duties upon spirits distilled within the United States, and upon stills.

The case upon which an opinion is required, is summarily as follows. The four most western counties of Pennsylvania, since the commencement of those laws, a period of more than three years, have been in steady and violent opposition to them. By formal public meetings of influential individuals, whose resolutions and proceedings had for undisguised objects to render the laws odious, to discountenance a compliance with them, and to intimidate individuals from accepting and executing offices under them; by a general spirit of opposition (thus fomented) among the inhabitants, by repeated instances of armed parties going in disguise to the houses of the officers of the revenue, and inflicting upon them personal violence and outrage, by general combinations to forbear a compliance with the requisitions of the laws, by examples of injury to the property and insult to the persons of individuals who have shown by their conduct a disposition to comply, and by an almost universal non-compliance with the laws, their execution within the counties in question has been completely frustrated.

Various alterations have been made in the laws by the Legislature, to obviate, as far as possible, the objections of the inhabitants of those counties.

The executive, on its part, has been far from deficient in forbearance, lenity, or a spirit of accommodation.

But neither the legislative nor the executive accommodations have had any effect in producing compliance with the laws.

The opposition has continued and matured, till it has at length broken out in acts which are presumed to amount to treason.

Armed collections of men, with the avowed design of opposing the execution of the laws, have attacked the house of the Inspector of the Revenue, burnt and destroyed his property, and shed the blood of persons engaged in its defence; have made prisoner of the marshal of the district, and did not release him till, for the safety of his life, he stipulated to execute no more processes within the disaffected counties; have compelled both him and the Inspector of the Revenue to fly the country by a circuitous route, to avoid personal injury, perhaps assassination; have proposed the assembling of a convention of delegates from those counties and the neighboring ones of Virginia, probably with a view to systematize measures of more effectual opposition; have forcibly seized, opened, and spoliated a mail of the United States.

What in this state of things is proper to be done? The President has, with the advice of the heads of departments and the Attorney-General, caused to be submitted all the evidence of the foregoing facts to the consideration of an associate judge, under the act entitled, "An act to provide for calling forth the militia to execute the laws of the Union, suppress insurrection, and repel invasion."

If the judge shall pronounce that the case described in the second section of that act exists, it will

follow that a competent force of militia should be called forth and employed to suppress the insurrection, and support the civil authority in effectuating obedience to the laws and punishment of offenders.

It appears to me that the very existence of government demands this course, and that a duty of the highest nature urges the Chief Magistrate to pursue it. The Constitution and laws of the United States contemplate and provide for it.

What force of militia shall be called out, and from what State or States?

The force ought, if attainable, to be an imposing one, such, if practicable, as will deter from opposition, save the effusion of the blood of citizens, and serve the object to be accomplished.

The quantum must, of course, be regulated by the resistance to be expected. 'T is computed that the four opposing counties contain upwards of sixteen thousand males of sixteen years and more; that of these about seven thousand may be expected to be armed.

'T is possible that the union of the neighboring counties of Virginia may augment this force. 'T is not impossible that it may receive an accession from some adjacent counties of this State on this side of the Alleghany Mountains.

To be prepared for the worst, I am of opinion that twelve thousand militia ought to be ordered to assemble—9,000 foot and 3,000 horse. I should not propose so many horse, but for the probability that this description of militia will be more easily procured for the service.

From what State or States shall these come?

The law contemplates that the militia of a State in which an insurrection happens, if willing and sufficient, shall first be employed, but gives power to employ the militia of other States in the case either of refusal or insufficiency.

The Governor of Pennsylvania, in an official conference this day, gave it explicitly as his opinion to the President, that the militia of Pennsylvania alone would be found incompetent to the suppression of the insurrection.

This opinion of the Chief Magistrate of the State is presumed to be a sufficient foundation for calling in, in the first instance, the aid of the militia of the neighboring States.

I would submit, then, that Pennsylvania be required to furnish 6,000 men, of whom 1,000 to be horse; New Jersey 2,000, of whom 800 to be horse; Maryland 2,000, of whom 600 to be horse; Virginia 2,000, of whom 600 to be horse.

Or, perhaps, it may be as eligible to call upon each State for such a number of troops, leaving to itself the proportion of horse and foot according to convenience. The militia called for to rendezvous at Carlisle, in Pennsylvania, and Cumberland Fort, in Virginia, on the 10th of September next. The law requires that previous to the using of force, a proclamation shall issue, commanding the insurgents to disperse and return peaceably to their respective abodes within a limited time. This step must, of course, be taken.

The application of the force to be called out and

other ulterior measures must depend on circumstances as they shall arise.

With the most perfect respect, etc.

HAMILTON TO WASHINGTON

Report on Opposition to Internal Duties

TREASURY DEPARTMENT, August 5, 1794.

SIR:—The disagreeable crisis at which matters have lately arrived in some of the western counties of Pennsylvania, with regard to the law laying duties on spirits distilled within the United States, and on stills, seems to render proper a review of the circumstances which have attended those laws in that scene from their commencement to the present time, and of the conduct which has hitherto been observed on the part of the government, its motives and effect, in order to a better judgment of the measures necessary to be pursued in the existing emergency.

The opposition to those laws in the four most western counties of Pennsylvania (Alleghany, Washington, Fayette, and Westmoreland) commenced as early as they were known to have been passed. It has continued with different degrees of violence in different counties, and at different periods, but Washington has uniformly distinguished its resistance by a more excessive spirit than has appeared in the other counties, and seems to have been chiefly instrumental in kindling and keeping alive the flame.

The opposition first manifested itself in the milder shape of the circulation of opinions unfavorable to

the law, and calculated by the influence of public disesteem to discourage the accepting or holding of offices under it, or the complying with it by those who might be so disposed, to which was added the show of a discontinuance of the business of distilling.

These expedients were shortly after succeeded by private associations to *forbear* compliance with the law. But it was not long before these more negative modes of opposition were perceived to be likely to prove ineffectual. And in proportion as this was the case, and as the means of introducing the laws into operation were put into execution, the disposition to resistance became more turbulent and more inclined to adopt and practise violent expedients. The officers now began to experience marks of contempt and insult. Threats against them became more frequent and loud; and after some time these threats were ripened into *acts* of ill treatment and outrage.

These acts of violence were preceded by certain meetings of malcontent persons, who entered into resolutions calculated at once to confirm, inflame, and systematize the spirit of opposition.

The first of these meetings was holden at a place called Red Stone Old Fort, on the 27th of July, 1791, where it was concerted that county committees should be convened in the four counties, at the respective seats of justice therein. On the 23d of August following one of these committees assembled in the county of Washington.

This meeting passed some intemperate resolutions, which were afterward printed in the *Pittsburgh Gazette*, containing a strong censure on the law,

declaring that any person *who had accepted or might accept an office under Congress, in order to carry it into effect, should be considered as inimical to the interests of the country;* and recommending to the citizens of Washington County to treat every person who had accepted or might thereafter accept any such office, with contempt, and absolutely to refuse all kind of communication or intercourse with the officers, and to withhold from them all aid, support, or comfort.

Not content with this vindictive proscription of those who might esteem it their duty, in the capacity of officers, to aid in the execution of the constitutional laws of the land, the meeting proceeded to accumulate topics of crimination of the government, though foreign to each other; authorizing, by this zeal for censure, a suspicion that they were actuated, not merely by the dislike of a particular law, but by a disposition to render the government itself unpopular and odious.

This meeting, in further prosecution of their plan, deputed three of their members to meet delegates from the counties of Westmoreland, Fayette, and Alleghany, on the first Tuesday of September following, for the purpose of expressing the sense of the people of those counties, in an address to the Legislature of the United States upon the subject of the excise law and *other grievances.*

Another meeting accordingly took place on the 7th of September, 1791, at Pittsburgh, in the county of Alleghany, at which there appeared persons in the character of delegates from the four western counties.

This meeting entered into resolutions more com-

prehensive in their objects, and not less inflammatory in their tendency than those which had before passed the meeting in Washington.

Their resolutions contained severe censures, not only on the law which was the immediate subject of objection, but upon what they termed the exorbitant salaries of officers, the unreasonable interest of the public debt, the want of discrimination between original holders and transferees, and the institution of a national bank. The same unfriendly temper towards the Government of the United States, which seemed to have led out of their way the meeting at Washington, appears to have produced a similar wandering in that at Pittsburgh.

A representation to Congress, and a remonstrance to the Legislature of Pennsylvania against the law more particularly complained of, were prepared by this meeting, published together with the other proceedings in the *Pittsburgh Gazette*, and afterwards presented to the respective bodies to whom they were addressed.

These meetings, composed of very influential individuals, and conducted without moderation or prudence, are justly chargeable with the excesses which have been from time to time committed; serving to give consistency to an opposition which has at length matured to a point that threatens the foundations of the government and of the Union, unless speedily and effectually subdued.

On the 6th of the same month of September, the opposition broke out in an act of violence upon the person and property of Robert Johnson, collector

of the revenues for the counties of Alleghany and Washington.

A party of men, armed and disguised, waylaid him at a place on Pidgeon Creek, in Washington County, seized, tarred and feathered him, cut off his hair, and deprived him of his horse, obliging him to travel on foot a considerable distance in that mortifying and painful situation.

The case was brought before the District Court of Pennsylvania, out of which processes issued against John Robertson, John Hamilton, and Thomas McComb, three of the persons concerned in the outrage.

The serving of these processes was confided by the then marshall, Clement Biddle, to his deputy, Joseph Fox, who in the month of October went into Alleghany County for the purpose of serving them.

The appearances and circumstances which Mr. Fox observed himself, in the course of his journey, and learned afterwards, upon his arrival at Pittsburgh, had the effect of deterring him from the service of the processes, and unfortunately led him to adopt the injudicious and fruitless expedient of sending them to the parties by a private messenger under cover.

The deputy's report to the marshal states a number of particulars evincing a considerable fermentation in the part of the country to which he was sent, and inducing a belief on his part, that he could not with safety have executed the processes. The marshal, transmitting this report to the district attorney, makes the following observations upon it: "I am sorry to add, that he (the deputy) found the people in

general in the western part of the State, and particularly beyond the Alleghany Mountains, in such a ferment on account of the act of Congress for laying a duty on distilled spirits, and so much opposed to the execution of the said act, and from a variety of threats to himself personally, although he took the utmost precaution to conceal his errand, that he was not only convinced of the impossibility of serving the process, but that any attempt to effect it would have occasioned the most violent opposition from the greater part of the inhabitants; and he declares that if he had attempted it, he believes he should not have returned alive. I spared no expense nor pains to have the process of the court executed, and have not the least doubt that my deputy would have accomplished it, if it could have been done."

The reality of the danger to the deputy was countenanced by the opinion of General Neville, the inspector of the revenue, a man who before had given, and since has given, numerous proofs of a steady and firm temper. And what followed is a further confirmation of it. The person who had been sent with the processes was seized, whipped, tarred and feathered, and after having his money and horse taken from him, was blindfolded and tied in the woods, in which condition he remained five hours.

Very serious reflections naturally occurred upon this occasion. It seemed highly probable, from the issue of the experiment which had been made, that the ordinary course of civil process would be ineffectual for enforcing the execution of the law in the scene in question, and that a perseverance in this course

might lead to a serious concussion. The law itself was still in the infancy of its operation, and far from established in other important portions of the Union. Prejudices against it had been industriously disseminated, misrepresentations diffused, misconceptions fostered. The Legislature of the United States had not yet organized the means by which the Executive could come in aid of the Judiciary, when found incompetent to the execution of the laws. If neither of these impediments to a decisive exertion had existed, it was desirable, especially in a republican government, to avoid what is in such cases the ultimate resort, till all the milder means had been tried without success.

Under the united influence of these considerations, it appeared advisable to forbear urging coercive measures, until the laws had gone into more extensive operation, till further time for reflection and experience of its operation had served to correct false impressions and inspire greater moderation, and till the Legislature had had an opportunity, by a revision of the law, to remove, as far as possible, objections, and to reinforce the provisions for securing its execution.

Other incidents occurred from time to time, which are further proofs of the very improper temper that prevailed among the inhabitants of the refractory counties.

Mr. Johnson was not the only officer who about the same period experienced outrage. Mr. Wells, collector of the revenue for Westmoreland and Fayette, was also ill-treated at Greensburgh and Union Town; nor were the outrages perpetrated confined to the

officers; they extended to private citizens who only dared to show their respect for the laws of their country.

Some time in October, 1791, an unhappy man of the name of Wilson, a stranger in the county, and manifestly disordered in his intellects, imagining himself to be a collector of the revenue, or invested with some trust in relation to it, was so unlucky as to make inquiries concerning distillers who had entered their stills, giving out that he was to travel through the United States, to ascertain and report to Congress the number of stills, etc. This man was pursued by a party in disguise, taken out of his bed, carried about five miles back to a smith's shop, stripped of his clothes, which were afterwards burnt, and, after having been himself inhumanly burnt in several places with a heated iron, was tarred and feathered, and about daylight dismissed — naked, wounded, and otherwise in a very suffering condition. These particulars are communicated in a letter from the inspector of the revenue, of the 17th of November, who declares that he had then himself seen the unfortunate maniac, the abuse of whom, as he expresses it, exceeded description, and was sufficient to make human nature shudder. The affair is the more extraordinary, as persons of weight and consideration in that county are understood to have been actors in it, and as the symptoms of insanity were, during the whole time of inflicting the punishment, apparent— the unhappy sufferer displaying the heroic fortitude of a man who conceived himself to be a martyr to the discharge of some important duty.

Not long after, a person of the name of Roseberry underwent the humiliating punishment of tarring and feathering, with some aggravations, for having in conversation hazarded the very natural and just but unpalatable remark, that the inhabitants of that county could not reasonably expect protection from a government whose laws they so strenuously opposed.

The audacity of the perpetrators of those excesses was so great, that an armed banditti ventured to seize and carry off two persons who were witnesses against the rioters in the case of Wilson, in order to prevent their giving testimony of the riot to a court then sitting, or about to sit.

Designs of personal violence against the Inspector of the Revenue himself, to force him to a resignation, were repeatedly attempted to be put in execution by armed parties, but by different circumstances were frustrated.

In the session of Congress which commenced in October, 1791, the law laying a duty on distilled spirits and stills came under the revision of Congress, as had been anticipated. By an act passed May 8, 1792, during that session, material alterations were made in it. Among these the duty was reduced to a rate so moderate as to have silenced complaint on that head; and a new and very favorable alternative was given to the distiller, that of paying a monthly instead of a yearly rate, according to the capacity of his still, with liberty to take a license for the precise term which he should intend to work it, and to renew that license for a further term or terms. This amending act, in its progress through the Legislature, en-

gaged the particular attention of members who themselves were interested in distilleries, and of others who represented parts of the country in which the business of distilling was extensively carried on.

Objections were well considered, and great pains taken to obviate all such as had the semblance of reasonableness.

The effect has in a great measure corresponded with the views of the Legislature. Opposition has subsided in several districts where it before prevailed; and it was natural to entertain, and not easy to abandon, a hope that the same thing would by degrees have taken place in the four western counties of this State. But, notwithstanding some flattering appearances at particular junctures, and infinite pains by various expedients to produce the desirable issue, the hope entertained has never been realized, and is now at an end, as far as the ordinary means of executing laws are concerned.

The first law had left the number and positions of the offices of inspection, which were to be established in each district for receiving entries of stills, to the discretion of the supervisor. The second, to secure a due accommodation to distillers, provides peremptorily that there shall be one in each county.

The idea was immediately embraced, that it was a very important point in the scheme of opposition to the law, to prevent the establishment of offices in the respective counties. For this purpose the intimidation of well-disposed inhabitants was added to the plan of molesting and obstructing the officers by force or otherwise, as might be necessary. So effectually

was the first point carried (the certain destruction of property and the peril of life being involved), that it became almost impracticable to obtain suitable places for offices in some of the counties, and when obtained, it was found a matter of necessity, in almost every instance, to abandon them.

After much effort, the Inspector of the Revenue succeeded in procuring the house of William Faulkner, a captain in the army, for an office of inspection in the county of Washington. This took place in August, 1792. The office was attended by the inspector of the revenue in person, till prevented by the following incidents.

Captain Faulkner, being in pursuit of some deserters from the troops, was encountered by a number of people in the same neighborhood where Mr. Johnson had been ill-treated the preceding year, who reproached him with letting his house for an office of inspection, drew a knife upon him, threatened to scalp him, tar and feather him, and reduce his house and property to ashes, if he did not solemnly promise to prevent the further use of his house for an office. Capt. Faulkner was induced to make the promise exacted, and, in consequence of the circumstance, wrote a letter to the inspector, dated the 20th of August, countermanding the permission for using his house, and the day following gave a public notice in the *Pittsburgh Gazette* that the office of inspection should be no longer kept there.

At the same time another engine of opposition was in operation. Agreeable to a previous notification, there met at Pittsburgh, on the 21st of August, a

number of persons styling themselves "A Meeting of Sundry Inhabitants of the Western Counties of Pennsylvania."

This meeting entered into resolutions not less exceptionable than those of its predecessors. The preamble suggested that a tax on *spirituous liquors* is unjust in itself, and oppressive upon the poor; that *internal taxes upon consumption* must, in the end, destroy the liberties of every country in which they are introduced; that the law in question, from certain local circumstances which are specified, would bring immediate distress and ruin upon the western country; and concludes with the sentiment, that they think it their duty to persist in remonstrances to Congress, and in every other LEGAL measure that may obstruct the operation of the LAW.

The resolutions then proceed, first, to appoint a committee to prepare and cause to be presented to Congress an address, stating objections to the law, and praying for its repeal; secondly, to appoint committees of correspondence for Washington, Fayette, and Alleghany, charged to correspond together, and with such committee as should be appointed for the same purpose in the county of Westmoreland, or with any committees of a similar nature that might be appointed in other parts of the United States, and also, if found necessary, to call together either general meetings of the people, in their respective counties, or conferences of the several committees; and lastly, to declare that they will, in future, consider those who hold offices for the collection of the duty, as unworthy of their friendship, that they will have *no intercourse*

nor dealings with them, will *withdraw from them every assistance, withhold all the comforts of life which depend upon those duties that as men and fellow-citizens we owe to each other, and will upon all occasions treat them with contempt, earnestly* RECOMMENDING IT TO THE PEOPLE AT LARGE TO FOLLOW THE SAME LINE OF CONDUCT TOWARDS THEM.

The idea of pursuing *legal* measures to *obstruct* the *operation* of a *law*, needs little comment. Legal measures may be pursued to procure the repeal of a law, but to *obstruct its operation* presents a contradiction in terms. The *operation*, or, what is the same thing, the *execution* of a law, cannot be obstructed after it has been constitutionally enacted, without illegality and crime. The expression quoted is one of those phrases which can only be used to conceal a disorderly and culpable intention under forms that may escape the hold of the law.

Neither was it difficult to perceive that the anathema pronounced against the officers of the revenue placed them in a state of virtual outlawry, and operated as a signal to all those who were bold enough to encounter the guilt and the danger to violate both their lives and their properties.

The foregoing proceedings, as soon as known, were reported by the Secretary of the Treasury to the President. The President, on the 15th of September, 1792, issued a proclamation, "earnestly admonishing and exhorting all persons whom it might concern to refrain and desist from all unlawful combinations and proceedings whatsoever, having for object, or tending, to obstruct the operation of the laws aforesaid,

inasmuch as all lawful ways and means would be put in execution for bringing to justice the infractors thereof, and securing obedience thereto; and moreover, charging and requiring all courts, magistrates, and officers whom it might concern, according to the duties of their several offices, to exert the powers in them respectively vested by law, for the purposes aforesaid; thereby also enjoining and requiring all persons whomsoever, as they tendered the welfare of their country, the just and due authority of government, and the preservation of the public peace, to be aiding and assisting therein according to law"; and likewise directed that prosecutions might be instituted against the offenders in the cases in which the laws would support and the requisite evidence could be obtained.

Pursuant to these instructions, the Attorney-General, in co-operation with the attorney of the district, attended a circuit court which was holden at Yorktown, in October, 1792, for the purpose of bringing forward prosecutions in the proper cases.

Collateral measures were taken to procure for this purpose the necessary evidence.

The supervisor of the revenue was sent into the opposing survey, to ascertain the real state of that survey, to obtain evidence of the persons who were concerned in the riot in Faulkner's case, and of those who composed the meeting at Pittsburgh, to uphold the confidence and encourage the perseverance of the officers acting under the law, and to induce, if possible, the inhabitants of that part of the survey which appeared least disinclined, to come voluntarily

into the law by arguments addressed to their sense of duty, and exhibiting the eventual dangers and mischiefs of resistance.

The mission of the supervisor had no other fruit than that of obtaining evidence of the persons who composed the meeting at Pittsburgh, and of two who were understood to be concerned in the riot; and a confirmation of the enmity which certain active and designing leaders had industriously infused into a large proportion of the inhabitants, not against the particular laws in question only, but of a more ancient date, against the Government of the United States itself.

The then Attorney-General being of opinion that it was at best a doubtful point whether the proceedings of the meeting at Pittsburgh contained *indictable* matter, no prosecution was attempted against those who composed it, though, if the ground for proceeding against them had appeared to be firm, it is presumed that the truest policy would have dictated that course.

Indictments were preferred to the Circuit Court, and found against the two persons understood to have been concerned in the riot, and the usual measures were taken for carrying them into effect.

But it appearing afterwards from various representations, supported by satisfactory testimony, that there had been some mistake as to the persons accused, justice and policy demanded that the prosecutions should be discontinued, which was accordingly done.

This issue of the business unavoidably defeated the

attempt to establish examples of the punishment of persons who engaged in a violent resistance of the laws, and left the officers to struggle against the stream of resistance without the advantage of such examples.

The following plan, which was afterwards put in execution, was about this time digested, for carrying, if possible, the laws into effect without the necessity of recurring to force.

1. To prosecute delinquents in the cases in which it could be clearly done for non-compliance with the laws. 2. To intercept the markets for the surplus produce of the distilleries of the non-complying counties, by seizing the spirits on their way to those markets in places where it could be effected without opposition. 3. By purchases through agents, for the use of the army (instead of deriving the supply through contracts as formerly), confining them to spirits, in respect to which there had been a compliance with the laws.

The motives to this plan speak for themselves. It aimed, besides the influence of penalties on delinquents, at making it the general interest of the distillers to comply with the laws, by interrupting the market for a very considerable surplus, and by at the same time confining the benefit of the large demand for public service to those who did their duty to the public, and furnishing, through the means of payment in cash, that medium for paying the duties, the want of which was alleged to be a great difficulty in the way of compliance. But two circumstances conspired to counteract the success of the plan: one, the necessity,

towards incurring the penalties of non-compliance, of there being an office of inspection in each county, which was prevented in some of the counties by means of the intimidation practised for that purpose; another, the non-extension of the law to the territory northwest of the Ohio, into which a large proportion of the surplus before mentioned was sent. A cure for these defects could only come from the Legislature. Accordingly, in the session which began in November, 1792, measures were taken for procuring a further revision of the laws. A bill containing amendments of those and other defects, was brought in; but it so happened, that this object, by reason of more urgent business, was deferred till towards the close of the session, and finally went off through the usual hurry of that period.

The continuance of the embarrassment incident to this state of things, naturally tended to diminish much of the efficacy of the plan which had been devised. Yet it was resolved, as far as legal provisions would bear out the officers, to pursue it with perseverance. There was ground to entertain hopes of its good effects; and it was certainly the most likely course which could have been adopted towards attaining the objects of the laws, by means short of force; evincing unequivocally the sincere disposition to avoid this painful resort, and the steady moderation which has characterized the measures of the government.

In pursuance of this plan, prosecutions were occasionally instituted in the mildest forms, seizures were made as opportunities occurred, and purchases on public account were carried on.

It may be incidentally remarked that these purchases were extended to other places; where, though the same disorders did not exist, it appeared advisable to facilitate the payment of the duties by this species of accommodation.

Nor was this plan, notwithstanding the deficiency of legal provision, which impeded its full execution, without corresponding effects. Symptoms from time to time appeared which authorized expectations, that with the aid, at another session, of the desired supplementary provisions, it was capable of accomplishing its end, if no extraordinary events occurred.

The opponents of the laws, not insensible of the tendency of that plan, nor of the defects in the laws which interfered with it, did not fail from time to time to pursue analogous modes of counteraction. The effort to frustrate the establishment of offices of inspection, in particular, was persisted in, and even increased. Means of intimidating officers and others, continued to be exerted.

In April, 1793, a party of armed men in disguise made an attack in the night upon the house of a collector of revenue who resided in Fayette County, but he happening to be from home, they contented themselves with breaking open his house, threatening, terrifying, and abusing his family.

Warrants were issued for apprehending some of the rioters upon this occasion, by Isaac Mason and James Findlay, assistant judges of Fayette County, which were delivered to the sheriff of that county, who, it seems, refused to execute them, for which he has since been indicted.

This is at once an example of the disposition to support the laws of the Union, and of an opposite one, in the local officers of Pennsylvania, within the non-complying scene. But it is a truth too important not to be noticed, and too injurious not to be lamented, that the prevailing spirit of those officers has been either hostile or lukewarm to the execution of those laws; and that the weight of an *unfriendly official influence* has been one of the most serious obstacles with which they have had to struggle.

In June following, the Inspector of the Revenue was burnt in effigy in Alleghany County, at a place and on a day of some public election, with much display, in the presence of and without interruption from magistrates and other public officers.

On the night of the 22d of November, another party of men, some of them armed, and all in disguise, went to the house of the same collector of Fayette which had been visited in April, broke and entered it, and demanded a surrender of the officer's commission and official books. Upon his refusing to deliver them up, they presented pistols at him, and swore that if he did not comply they would instantly put him to death. At length a surrender of the commission and books was enforced. But not content with this, the rioters, before they departed, required of the officer that he should, within two weeks, publish his resignation, on pain of another such visit and a destruction of his house.

Notwithstanding these excesses, the laws appeared during the latter periods of this year to be rather gaining ground. Several principal distillers, who had

formerly held out, complied, and others discovered a disposition to comply, which was only restrained by the fear of violence.

But these favorable circumstances served to beget alarm among those who were determined, at all events, to prevent the quiet establishment of the laws. It soon appeared that they meditated, by fresh and greater excesses, to aim a still more effectual blow at them, to subdue the growing spirit of compliance, and to destroy entirely the organs of the laws, within that part of the country, by compelling all the officers to renounce their offices.

The last proceeding in the case of the collector of Fayette, was in this spirit.

In January, of the present year, further violences appear to have been perpetrated. William Richmond, who had given information against some of the rioters in the affair of WILSON, had his barn burnt, with all the grain and hay which it contained; and the same thing happened to Robert Shawhan, a distiller, who had been among the first to comply with the law, and who had always spoken favorably of it. But in neither of these instances (which happened in the county of Alleghany), though the presumptions were violent, was any positive proof obtained.

The Inspector of the Revenue, in a letter of the 27th of February, writes, that he had received information that persons living near the dividing line of Alleghany and Washington had thrown out threats of tarring and feathering one William Cochran, a

complying distiller, and of burning his distillery; and that it had also been given out that, in three weeks, there would not be a house standing in Alleghany County, of any person who had complied with the laws. In consequence of which, he had been induced to pay a visit to several leading individuals in that quarter, as well to ascertain the truth of the information, as to endeavor to avert the attempt to execute such threats.

It appeared afterwards, that on his return home he had been pursued by a collection of disorderly persons, threatening, as they went along, vengeance against him. On their way these men called at the house of James Kiddoe, who had recently complied with the laws, broke into his still-house, fired several balls under his still, and scattered fire over and about the house.

Letters from the Inspector, in March, announce an increased activity in promoting opposition to the laws; frequent meetings to cement and extend the combinations against it; and among other means for this purpose, a plan of collecting a force to seize him, compel him to resign his commission, and detain him prisoner probably as a hostage.

In May and June new violences were committed. James Kiddoe, the person above mentioned, and William Cochran, another complying distiller, met with repeated injury to their property. Kiddoe had parts of his grist-mill at different times carried away, and Cochran suffered more material injuries; his still was destroyed, his saw-mill was rendered useless by the taking away of the saw, and his grist-mill so

injured as to require to be repaired at considerable expense.

At the last visit, a note in writing was left, requiring him to publish what he had suffered in the *Pittsburgh Gazette*, on pain of another visit, in which he is threatened, in figurative but intelligible terms, with the destruction of his property by fire; thus adding to the profligacy of doing wanton injuries to a fellow-citizen, the tyranny of compelling him to be the publisher of his wrongs.

June being the month for receiving annual entries of stills, endeavors were used to open offices in Westmoreland and Washington, where it had been hitherto found impracticable. With much pains and difficulty places were secured for the purpose. That in Westmoreland was repeatedly attacked in the night by armed men, who frequently fired upon it, but according to a report which has been made to this department, it was defended with so much courage and perseverance by John Wells, an auxiliary officer, and Philip Regan, the owner of the house, as to have been maintained during the remainder of the month.

That in Washington, after repeated attempts, was suppressed; the first attempt was confined to pulling down the sign of the office, and threats of future destruction; the second effected the object in the following mode: About twelve persons, armed and painted black, in the night of the 6th of June, broke into the house of John Lynn, where the office was kept, and after having treacherously seduced him to come down stairs and put himself in their power, by

a promise of safety to himself and his house, they seized and tied him, threatened to hang him, took him to a retired spot in a neighboring wood, and there, after cutting off his hair, tarring and feathering him, swore him never again to allow the use of his house for an office, never to disclose their names, and never again to have any sort of agency in aid of the excise; having done which, they bound him naked to a tree, and left him in that situation till morning, when he succeeded in extricating himself. Not content with this, the malcontents some days after made him another visit, pulled down part of his house, and put him in a situation to be obliged to become an exile from his home, and to find an asylum elsewhere.

During this time several of the distillers, who had made entries and benefited by them, refused the payment of the duties, actuated, no doubt, by various motives.

Indications of a plan to proceed against the Inspector of the Revenue, in the manner which has been before mentioned, continued. In a letter from him of the 10th of July, he observed that the threatened visit had not been made, though he had still reason to expect it.

In the session of Congress which began in December, 1793, a bill for making the amendments in the laws, which had been for some time desired, was brought in, and on the 5th of June last became a law.

It is not to be doubted that the different stages of this business were regularly notified to the malcontents, and that a conviction of the tendency of the

amendments contemplated to effectuate the execution of the law, had matured the resolution to bring matters to a violent crisis.

The increasing energy of the opposition rendered it indispensable to meet the evil with proportionable decision. The idea of giving time for the law to extend itself in scenes where the dissatisfaction with it was the effect not of an improper spirit, but of causes which were of a nature to yield to reason, reflection, and experience (which had constantly weighed in the estimate of the measures proper to be pursued), had had its effect in an extensive degree. The experiment, too, had been long enough tried to ascertain, that where resistance continued, the root of the evil lay deep, and required measures of greater efficacy than had been pursued.

The laws had undergone repeated revisions of the legislative representatives of the Union, and had virtually received their repeated sanction, without even an attempt, as far as is now recollected or can be traced, to effect their repeal—affording an evidence of the general sense of the community in their favor. Complaints began to be loud from complying quarters, against the impropriety and injustice of suffering the laws to remain unexecuted in others.

Under the united influence of these considerations, there was no choice but to try the efficiency of the laws in prosecuting with vigor delinquents and offenders.

Processes issued against a number of non-complying distillers in the counties of Fayette and Alleghany, and indictments having been found at a

circuit court, holden at Philadelphia in July last, against Robert Smilie and John McCulloch, two of the rioters in the attack which in November preceding had been made upon the house of a collector of the revenue in Fayette County, processes issued against them also, to bring them to trial, and, if guilty, to punishment.

The marshal of the district went in person to serve these processes. He executed the trust without interruption, though under many discouraging circumstances, in Fayette County; but while he was in the execution of it in Alleghany County—being then accompanied by the Inspector of the Revenue, to wit—on the 15th of July last, he was beset on the road by a party of from thirty to forty armed men, who, after much previous irregularity of conduct, finally fired upon him, but, as it happened, without injury either to him or to the Inspector.

This attempt on the marshal was but the prelude of greater excesses.

About break of day, the 16th of July, in conformity with a plan which seems to have been for some time entertained, and which probably was only accelerated by the coming of the marshal into the survey, an attack by about one hundred persons, armed with guns and other weapons, was made upon the house of the Inspector, in the vicinity of Pittsburgh. The Inspector, though alone, vigorously defended himself against the assailants, and obliged them to retreat without accomplishing their purpose.

Apprehending that the business would not terminate here, he made application, by letter, to the

judges, generals of militia, and sheriff of the country for protection. A reply to his application from John Wilkins, junior, and John Gibson, magistrates and militia officers, informed him that the laws could not be executed so as to afford him the protection to which he was entitled, owing to the too general combination of the people in that part of Pennsylvania to oppose the revenue law; adding, that they would take every step in their power to bring the rioters to justice, and would be glad to receive information of the individuals concerned in the attack upon his house, that prosecutions might be commenced against them; and expressing their sorrow that, should the POSSE COMITATUS of the county be ordered out in support of the civil authority, very few could be gotten that were not of the party of the rioters.

The day following, the insurgents reassembled with a considerable augmentation of numbers, amounting, as has been computed, to at least five hundred, and on the 17th of July renewed their attack upon the house of the Inspector, who, in the interval, had taken the precaution of calling to his aid a small detachment from the garrison of Fort Pitt, which, at the time of the attack, consisted of eleven men, who had been joined by Major Abraham Kirkpatrick, a friend and connection of the Inspector.

There being scarcely a prospect of effectual defence against so large a body as then appeared, and as the Inspector had every thing to apprehend for his person, if taken, it was judged advisable that he

should withdraw from the house to a place of concealment—Major Kirkpatrick generously agreeing to remain with the eleven men, in the intention, if practicable, to make a capitulation in favor of the property; if not, to defend it as long as possible.

A parley took place, under cover of a flag which was sent by the insurgents to the house, to demand that the inspector should come forth, renounce his office, and stipulate never again to accept office under the same laws. To this it was replied, that the inspector had left the house upon their first approach, and that the place to which he had retired was unknown. They then declared that they must have whatever related to his office. They were answered, that they might send persons, not exceeding six, to search the house and take away whatever papers they could find appertaining to the office. But, not satisfied with this, they insisted, unconditionally, that the armed men who were in the house for its defence should march out and ground their arms, which Major Kirkpatrick peremptorily refused, considering it, and representing it to them, as a proof of their design to destroy the property. This refusal put an end to the parley.

A brisk firing then ensued between the insurgents and those in the house, which, it is said, lasted for nearly an hour, till the assailants, having set fire to the neighboring and adjacent buildings, eight in number, the intenseness of the heat, and the danger of an immediate communication of the fire to the house, obliged Major Kirkpatrick and his small party to come out and surrender themselves. In

the course of the firing, one of the insurgents was killed and several wounded, and three of the persons in the house were also wounded. The person killed is understood to have been the leader of the party, of the name of James McFarlane, then a major in the militia, formerly a lieutenant in the Pennsylvania line. The dwelling-house, after the surrender, shared the fate of the other buildings, the whole of which were consumed to the ground. The loss of property to the inspector, upon this occasion, is estimated (and, as it is believed, with great moderation) at not less than three thousand pounds.

The marshal, Colonel Presley Neville, and several others, were taken by the insurgents going to the inspector's house. All, except the marshal and Colonel Neville, soon made their escape; but these were carried off some distance from the place where the affray had happened, and detained till one or two o'clock the next morning. In the course of their detention, the marshal in particular suffered very severe and humiliating treatment, and was frequently in imminent danger of his life. Several of the party repeatedly presented their pieces at him, with every appearance of a design to assassinate him, from which they were with difficulty restrained by the efforts of a few, more humane and more prudent.

Nor could he obtain safety or liberty, but upon the condition of a promise, guaranteed by Colonel Neville, that he would serve no other process on the west side of the Alleghany Mountains. The alternative being immediate death, extorted from

the marshal a compliance with this condition, notwithstanding the just sense of official dignity and the firmness of character which were witnessed by his conduct throughout the trying scenes he had experienced.

The insurgents, on the 18th, sent a deputation of two of their number (one a justice of the peace) to Pittsburgh, to require of the marshal a surrender of the processes in his possession, intimating that his compliance would satisfy the people and *add to his safety;* and also to demand of General Neville, in peremptory terms, the resignation of his office; threatening, in case of refusal, to attack the place, and take him by force—demands which both these officers did not hesitate to reject, as alike incompatible with their honor and their duty.

As it was well ascertained that no protection was to be expected from the magistrates or inhabitants of Pittsburgh, it became necessary to the safety both of the inspector and the marshal, to quit that place; and, as it was known that all the usual routes to Philadelphia were beset by the insurgents, they concluded to descend the Ohio, and proceed by a circuitous route to the seat of government, which they began to put in execution on the night of the 19th of July.

Information has also been received of a meeting of a considerable number of persons at a place called Mingo Creek Meeting-house, in the county of Washington, to consult about the further measures which it might be advisable to pursue; that at this meeting a motion was made to approve and agree to support

the proceedings which had taken place, until the excise law was repealed, and an act of oblivion passed; but that, instead of this, it had been agreed that the four western counties of Pennsylvania and the neighboring counties of Virginia should be invited to meet in a convention of delegates, on the 14th of the present month, at Parkinson's, on Mingo Creek, in the county of Washington, to take into consideration the situation of the western country, and concert such measures as should appear suited to the occasion.

It appears, moreover, that, on the 25th of July last, the mail of the United States, on the road from Pittsburgh to Philadelphia, was stopped by two armed men, who cut it open, and took out all the letters except those contained in one packet. These armed men, from all the circumstances which occurred, were manifestly acting on the part of the insurgents.

The declared object of the foregoing proceedings is to obstruct the execution and compel a repeal of the laws laying duties on spirits distilled within the United States, and upon stills. There is just cause to believe that this is connected with an indisposition, too general in that quarter, to share in the common burdens of the community, and with a wish, among some persons of influence, to embarrass the government. It is affirmed, by well-informed persons, to be a fact of notoriety, that the revenue laws of the State itself have always been either resisted or very defectively complied with in the same quarter.

With the most perfect respect, I have the honor to be, etc.

CABINET OPINION—HAMILTON AND KNOX TO WASHINGTON

PHILADELPHIA, August 5, 1794.

SIR:

The draft of a proclamation and that of an instruction to the commissioners being both prepared, we take the liberty to suggest that we think a meeting to-morrow morning, at such hour as may be convenient to the President, may be advisable. The Secretary of State and Attorney-General being out of town, we cannot consult them, but we will engage the attendance of the Attorney-General, provisionally, by nine o'clock, and if the President concludes on the meeting at that hour, he can have the Secretary of State apprised of it.

We have the honor to be, etc.

A. HAMILTON.
H. KNOX.

HAMILTON TO WASHINGTON

August 6, 1794.

The Secretary of the Treasury presents his respects to the President, and sends him the statement of facts promised. The date is proposed to be two or three days before the proclamation, when it was in fact begun. There is a blank to be filled with a quotation from a former proclamation, which is not

immediately at hand; but the blank will be filled before it goes to the press. If the President thinks the publication proper, and will be pleased to return the inclosed, the original draft being too much obliterated for the purpose, it shall be immediately begun in Dunlap's paper.

PROCLAMATION

August 7, 1794.

By the President of the United States of America

A PROCLAMATION

Whereas, combinations to defeat the execution of the laws laying duties upon spirits distilled within the United States, and upon stills, have, from the time of the commencement of those laws, existed in some of the western parts of Pennsylvania: and whereas, the said combinations, proceeding in a manner subversive equally of the just authority of government and of the rights of individuals, have hitherto effected their dangerous and criminal purpose, by the influence of certain irregular meetings, whose proceedings have tended to encourage and uphold the spirit of opposition; by misrepresentations of the laws, calculated to render them odious; by endeavors to deter those who might be so disposed from accepting offices under them, through fear of public resentment, and of injury to person and property, and to compel those who had accepted such offices, by actual violence to surrender

or forbear the execution of them; by circulating vindictive menaces against all those who should otherwise directly or indirectly aid in the execution of the said laws, or who, yielding to the dictates of conscience and to a sense of obligation, should themselves comply therewith, by actually injuring and destroying the property of persons who were understood to have so complied; by inflicting cruel and humiliating punishments upon private citizens, for no other cause than that of appearing to be the friends of the laws; by intercepting the public officers on the highways, abusing, assaulting, and otherwise ill-treating them; by going to their houses in the night, gaining admittance by force, taking away their papers, and committing other outrages; employing for these unwarrantable purposes the agency of armed banditti, disguised in such manner as for the most part to escape discovery: and whereas, the endeavors of the Legislature to obviate objections to the said laws, by lowering the duties, and by other alterations conducive to the convenience of those whom they immediately affect (though they have given satisfaction in other quarters), and the endeavors of the executive officers to conciliate a compliance with the laws, by explanations, by forbearance, and even by particular accommodations, founded on the suggestions of local considerations, have been disappointed of their effect by the machinations of persons, whose industry to excite resistance has increased with every appearance of a disposition among the people to relax in their opposition and to acquiesce in the laws, insomuch that

many persons in the said western parts of Pennsylvania have at length been hardy enough to perpetrate acts which I am advised amount to treason, being overt acts of levying war against the United States; the said persons having, on the 16th and 17th of July last past, proceeded in arms (on the second day amounting to several hundreds) to the house of John Neville, inspector of the revenue for the fourth survey of the district of Pennsylvania, having repeatedly attacked the said house, with the persons therein, wounding some of them; having seized David Lenox, marshal of the district of Pennsylvania, who previous thereto had been fired upon while in the execution of his duty by a party of armed men, detaining him for some time prisoner, till, for the preservation of his life, and the obtaining of his liberty, he found it necessary to enter into stipulations to forbear the execution of certain official duties touching processes issuing out of a court of the United States; and having finally obliged the said inspector of the said revenue, and the said marshal, from considerations of personal safety, to fly from that part of the country, in order, by a circuitous route, to proceed to the seat of government; avowing, as the motives of these outrageous proceedings, an intention to prevent, by force of arms, the execution of the said laws; to oblige the said inspector of the revenue to renounce his said office; to withstand, by open violence, the lawful authority of the Government of the United States; and to compel thereby an alteration in the measures of the Legislature, and a repeal of the laws aforesaid: and whereas, by

a law of the United States, entitled "An act to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions," it is enacted, "that, whenever the laws of the United States shall be opposed, or the execution thereof obstructed, in any State, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by that act, the same being notified by an associate justice or the district judge, it shall be lawful for the President of the United States to call forth the militia of such State to suppress such combinations, and to cause the laws to be duly executed; and if the militia of a State where such combinations may happen shall refuse, or be insufficient, to suppress the same, it shall be lawful for the President, if the Legislature of the United States shall not be in session, to call forth and employ such members of the militia of any other State or States most convenient thereto, as may be necessary; and the use of the militia, so to be called forth, may be continued, if necessary, until the expiration of thirty days after the commencement of the ensuing session; *provided always*, that whenever it may be necessary, in the judgment of the President, to use the military force hereby directed to be called forth, the President shall forthwith, and previous thereto, by proclamation, command such insurgents to disperse and retire peaceably to their respective abodes within a limited time"; and whereas, James Wilson, an associate justice, on the 4th instant, by writing under his hand, did, from evidence which had been laid before

him, notify to me that, "in the counties of Washington and Alleghany, in Pennsylvania, laws of the United States are opposed, and the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshal of that district": and whereas, it is in my judgment necessary, under the circumstances of the case, to take measures for calling forth the militia in order to suppress the combinations aforesaid, and to cause the laws to be duly executed, I have accordingly determined so to do, feeling the deepest regret for the occasion, but withal the most solemn conviction that the essential interests of the Union demand it, that the very existence of government and the fundamental principles of social order are materially involved in the issue, and that the patriotism and firmness of all good citizens are seriously called upon, as occasions may require, to aid in the effectual suppression of so fatal a spirit.

Wherefore, and in pursuance of the proviso above recited, I, George Washington, President of the United States, do hereby command all persons, being insurgents as aforesaid, and all others whom it may concern, on or before the first day of September next, to disperse and retire peaceably to their respective abodes. And I do, moreover, warn all persons whomsoever, against aiding, abetting, or comforting the perpetrators of the aforesaid treasonable acts; and do require all officers and other citizens, according to their respective duties, and the laws of the land, to exert their utmost

endeavors to prevent and suppress such dangerous proceedings.

In testimony whereof, I have caused the seal of the United States of America to be affixed to these presents, and signed the same with my hand.

Done at the city of Philadelphia, the seventh day of August, one thousand seven hundred and
[L. S.] ninety four, and of the independence of the United States of America, the nineteenth.

GEO. WASHINGTON.

By the President,
EDMUND RANDOLPH.

SECRETARY OF STATE TO MIFFLIN

Draft by Hamilton.

PHILADELPHIA, August 7, 1794.

SIR:—The President of the United States has directed me to acknowledge the receipt of your letter of the 5th instant, and to communicate to you the following reply:

In requesting an interview with you on the subject of the recent disturbances in the western parts of Pennsylvania, the President, besides the desire of manifesting a respectful attention to the chief magistrate of a State immediately affected, was influenced by the hopes that a free conference, guided by a united and comprehensive view of the Constitutions of the United States and of Pennsylvania, and of the respective institutions, authorities, rights, and duties

of the two governments, would have assisted him in forming more precise ideas of the nature of the *co-operation* which could be established between them, and a better judgment of the plan which it might be advisable for him to pursue, in the execution of his trust in so important and delicate a conjuncture. This having been his object, it is matter of some regret, that the course which has been suggested by you, as proper to be pursued, seems to have contemplated Pennsylvania in a light too separate and unconnected. The propriety of that course, in most if not in all respects, would be susceptible of little question if there were no federal government, federal laws, federal judiciary, or federal officers; if important laws of the United States, by a series of violent as well as of artful expedients, had not been frustrated in their execution for more than three years; if officers immediately charged with that execution, after suffering much and repeated insult, abuse, personal ill-treatment, and the destruction of property, had not been compelled for safety to fly the places of their residences, and the scenes of their official duties; if the service of the processes of a court of the United States had not been resisted; the marshal of the district made and detained for some time a prisoner, and compelled for safety also to abandon the performance of his duty, and return by a circuitous route to the seat of government; if, in fine, a judge of the United States had not in due form of law notified to the President, "that in the counties of Washington and Alleghany, in Pennsylvania, laws of the United States are opposed, and the execution

thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshal of that district." It is true, your excellency has remarked, that in the plan suggested you have only spoken as the executive magistrate of Pennsylvania, charged with a general superintendence and care, that the laws of the commonwealth be fully executed, leaving it implicitly to the judgment of the President to choose, on such evidence as he approves, the measures for discharging the analogous trust which is confided to him in relation to the laws of the Union. But it is impossible not to think that the current of the observations in your letter, especially as to the consequences which may result from the employment of coercive measures, previous to the preliminary course which is indicated in it, may be construed to imply a virtual disapprobation of that plan of conduct, on the part of the General Government, in the actual stage of its affairs, which you acknowledge would be proper on the part of the Government of Pennsylvania, if arrived at a similar stage. Let it be assumed here (to be more particularly shown hereafter), that the Government of the United States is now at that point, where it is admitted, if the Government of Pennsylvania was, the employment of force by its authority would be justifiable; and let the following extracts be consulted for the truth of the inference which has been just expressed. "Will not the resort to force inflame and cement the existing opposition? Will it not associate in a common resistance those who have

hitherto peaceably, as well as those who have riotously, expressed their abhorrence of the excise? Will it not collect and combine every latent principle of discontent, arising from the supposed oppressive operations of the federal judiciary, the obstruction of the western navigation, and a variety of other local sources? May not the magnitude of the opposition on the part of the ill-disposed, or the dissatisfaction of a *premature resort to arms* on the part of the well-disposed citizens of the State, eventually involve the necessity of employing the militia of other States? And the accumulation of discontent which the jealousy engendered by that movement may produce, who can calculate, or who will be able to avert?"

These important questions naturally give birth to the following serious reflections. The issues of human affairs are in the hands of Providence. Those intrusted with them in society have no other sure guide than the sincere and faithful discharge of their duty, according to the best of their judgments. In emergencies, great and difficult, not to act with an energy proportioned to their magnitude and pressure, is as dangerous as any other conceivable course. In the present case, not to exert the means which the laws prescribe for effectuating their own execution, would be to sacrifice those laws, and with them the Constitution, the Government, the principles of social order, and the bulwarks of private right and security. What worse can happen from the exertion of these means?

If, as cannot be doubted, the great body of the

citizens of the United States are attached to the Constitution, which they have established for the management of their common concerns; if they are resolved to support their own authority in that of the constitutional laws, against disorderly and violent combinations of comparatively small portions of the community; if they are determined to protect each other in the enjoyment of security to person and property; if they are decided to preserve the character of republican government, by evincing that it has adequate resources for maintaining the public order; if they are persuaded that their safety and their welfare are materially connected with the preservation of the Union, and consequently of a government adequate to its exigencies; in fine, if they are disposed to continue that state of respectability and prosperity which is now deservedly the admiration of mankind—the enterprise to be accomplished, should a resort to force prove inevitable, though disagreeable and painful, cannot be arduous or alarming.

If, in addition to these dispositions in the community at large, the officers of the governments of the respective States, feeling it to be not only a patriotic but a constitutional duty (inculcated by the oath enjoined upon all the officers of a State, legislative, executive, and judicial), to support in their several stations the Constitution of the United States, shall be disposed, as occasion may require (a thing as little to be doubted as the former), with sincerity and good faith to co-operate with the Government of the United States, to second with all their influence and

weight its legal and necessary measures, by a legal and substantial concert, then the enterprise to be accomplished can hardly even be deemed difficult.

But if, contrary to the anticipations which are entertained of these favorable dispositions, the great body of the people should be found indifferent to the preservation of the government of the Union, or insensible to the necessity of vigorous exertions to repel the danger which threatens their most important interests; or, if an unwillingness to encounter partial inconveniences should interfere with the discharge of what they owe to their permanent welfare; or if, either yielding to the suggestions of particular prejudices, or misled by the arts which may be employed to infuse jealousy and discontent, they should suffer their zeal for the support of public order to be relaxed by an unfavorable opinion of the merits and tendency of the measures which may be adopted; if above all it were possible that any of the State governments should, instead of prompting the exertions of the citizens, assist directly or indirectly in damping their ardor by giving a wrong bias to their judgment, or by disseminating dissatisfaction with the proceedings of the General Government, or should counteract the success of those proceedings by any sinister influence whatever, then, indeed, no one can calculate or may be able to avert the fatal evils with which such a state of things would be pregnant. Then, indeed, the foundations of our political happiness may be deeply shaken, if not altogether overturned.

The President, however, can suppose none of these

things. He cherishes an unqua
the virtue and good sense of th
tegrity and patriotism of the o
governments; and he counts abs
affectionate support, which he ha
all former occasions, and which h
the goodness of his intentions r
heretofore, merits.

It has been promised to show
hereafter that the Government of
is now at that point where, it is co
Government was, the employment
would be justifiable. This pron
fulfilled.

The facts already noted establ
but to render it palpable, it will be
to the positions which your ex
pleased to lay down.

You admit that, as the offences
the State, the military power
ought to be employed, when its j
after a fair experiment, had pro
enforce obedience or to punish
law; that if the strength and au
combination shall baffle and destr
judiciary authority, to recover a
a punishment, that authority m
claim the auxiliary intervention of
that in the last resort, at the re
auxiliary of the civil authority, t
the State would be called forth.
that the circumstances of the cas

a firm and energetic conduct on the part both of the State and General Government.

For more than three years, as already observed, certain laws of the United States have been obstructed in their execution by disorderly combinations. Not only officers, whose immediate duty it was to carry them into effect, have suffered violent personal outrage and injury, and destruction of property, at different times, but similar persecution has been extended to private citizens, who have aided, countenanced, or only complied with the laws. The violences committed have been so frequent, and such in their degree as to have been matters of general notoriety and alarm; and it may be added that they have been abundantly within the knowledge and under the notice of the judges and magistrates of Pennsylvania, of superior as well as inferior jurisdiction. If in particular instances they have been punished by the exertions of the magistrates, it is at least certain that their efforts have been in the main ineffectual. The spirit has continued, and, with some intervals of relaxation, has been progressive, manifesting itself in reiterated excesses. The judiciary authority of the United States has also, prior to the attempt which preceded the late crisis, made some fruitless efforts. Under a former marshal, an officer sent to execute process was deterred from it by the manifest danger of proceeding. These particulars serve to explain the extent, obstinacy, and inveteracy of the evil.

But the facts which immediately decide the complexion of the existing crisis are these: Numerous

delinquencies existed with regard to a compliance with the laws laying duties on spirits distilled within the United States, and upon stills. An armed banditti, in disguise, had recently gone to the house of an officer of the revenue, in the night, attacked it, broken open the doors, and, by menaces of instant death, enforced by pistols presented at him, had compelled a surrender of his commission and books of office. Contemporary acts of violence had been perpetrated in other quarters. Processes were issued out of a court of the United States, to recover the penalties incident to a non-compliance with the laws, and to bring to punishment the violent infractors of them, in the above-mentioned case, against two of whom indictments had been found. The marshal of the district went in person to execute these processes. In the course of his duty he was actually fired upon, on the high-road, by a body of armed men. Shortly after, other bodies of armed men (in the last instance amounting to several hundred persons) repeatedly attacked the house of the inspector of the revenue, with the declared intention of compelling him to renounce his office, and of obstructing the execution of the laws. One of these bodies of armed men made prisoner the marshal of the district, put him in jeopardy of his life, and did not release him till, for safety and to obtain his liberty, he engaged to forbear the further execution of the processes with which he was charged. In consequence of further requisitions and menaces of the insurgents, the marshal, together with the inspector of the revenue, has been since under the necessity of fly-

ing, secretly and by a circuitous route, from the scene of these transactions, towards the seat of government. An associate justice, pursuant to the provisions of the laws for that purpose, has, in the manner already stated, officially notified the President of the existence of combinations, in two of the counties of this State, to obstruct the execution of the laws, too powerful to be suppressed by the judiciary authority, or by the powers of the marshal.

Thus, then, it is unequivocally and in due form ascertained, in reference to the Government of the United States, that the judiciary authority, after a fair and full experiment, has proved incompetent to enforce obedience to, or to punish infractions of, the laws; that the strength and audacity of certain lawless combinations have baffled and destroyed the efforts of the judiciary authority to recover penalties or inflict punishment; and that this authority, by a regular notification of this state of things, has, in the last resort, as an auxiliary of the civil authority, claimed the intervention of the military power of the United States. It results, from these facts, that the case exists when—according to the positions advanced by your excellency, in reference to the State Government—the military power may, with due regard for all the requisite cautions, be rightfully interposed; and that the interposition of this power is called for, not only by principles of a firm and energetic conduct on the part of the General Government, but by the indispensable duty which the Constitution and the laws prescribe to the Executive of the United States. In this conclusion, your

excellency's discernment, on mature reflection, cannot, it is presumed, fail to acquiesce; nor can it refuse its concurrence in the opinion which the President entertains, that he may reasonably expect, when called for, the zealous co-operation of the militia of Pennsylvania; that as citizens, and friends to law and order, they may comply with the call, without any thing that can properly be denominated "a passive obedience to the mandates of government"; and that, as freemen, judging rightly of the cause and nature of the service proposed to them, they will feel themselves under the most sacred obligations to accept and perform it with alacrity. The theory of our political institutions knows no difference between the obligations of our citizens, in such a case, whether it relate to the government of this Union or of a State; and it is hoped and confided, that a difference will be as little known to their affections or opinions.

Your excellency, it is also presumed, will as little doubt, on the like mature reflection, that in such a case the President could not, without an abdication of the undoubted rights and authorities of the United States, and of his duty, postpone the measures for which the laws of the United States provide, to a previous experiment of the plan which is delineated in your letter.

The people of the United States have established a government for the management of their general interests; they have instituted executive organs for administering that government; and their representatives have established the rules by which these organs are to act. When their authority in that of

their government is attacked, by lawless combinations of the citizens of part of a State, they could never be expected to approve that the care of vindicating their authority, of enforcing their laws, should be transferred from the officers of their own government to those of a State, and this to wait the issue of a process so undeterminate in its duration as that which it is proposed to pursue; comprehend ing a further and full experiment of the judiciary authority of the State, a proclamation "to declare the sentiments of its government, announce a determination to prosecute and punish offenders, and to exhort the citizens at large to pursue a peaceable and patriotic conduct"; the sending of commissioners "to address those who have embarked in the present combinations upon the lawless nature and ruinous tendency of their proceedings; to inculcate the necessity of an immediate return to the duty which they owe their country; and to promise, as far as the State is concerned, forgiveness of their past transactions, upon receiving a satisfactory assurance that, in future, they will submit to the laws"; and, finally, a call of the Legislature of Pennsylvania, "that the ultimate means of subduing the spirit of insurrection, and of restoring tranquillity and order, may be prescribed by their wisdom and authority."

If there were no other objection to a transfer of this kind, the very important difference which is supposed to exist in the nature and consequences of the offences that have been committed, in the contemplation of the laws of the United States and those of Pennsylvania, would alone be a very serious obstacle.

The paramount considerations which forbid an acquiescence in this course of proceeding, render it unnecessary to discuss the probability of its success; else it might have been proper to test the considerations which have been mentioned as a ground of hope, by the inquiry, what was the precise extent of the success of past experiments, and especially whether the execution of the revenue laws of Pennsylvania within the scene in question was truly and effectually accomplished by them, or whether they did not rather terminate in a tacit compromise, by which appearances only were saved?

You are already, sir, advised that the President, yielding to the impressions which have been stated, has determined to take measures for calling forth the militia; and that these measures contemplate the assembling of a body of between twelve and thirteen thousand men, from Pennsylvania and the neighboring States of Virginia, Maryland, and New Jersey. The recourse thus early to the militia of the neighboring States, prevails from a probability of the insufficiency of that of Pennsylvania alone to accomplish the object; your excellency having, in your conference with the President, confirmed the conclusion which was deducible from the known local and other circumstances of the State, by the frank and express declaration which you made of your conviction of that insufficiency in reference to the number which could be expected to be drawn forth for the purpose.

But, while the President has conceived himself to be under an indispensable obligation to prepare for that eventual resort, he has still consulted the senti-

ment of regret which he expressed to you, at the possible necessity of an appeal to arms; and to avert it, if practicable, as well as to manifest his attention to the principle, that "a firm and energetic conduct does not preclude the exercise of a prudent and humane policy," he has (as you have been also advised) concluded upon the measure of sending himself commissioners to the discontented counties, to make one more experiment of a conciliatory appeal to the reason, virtue, and patriotism of their inhabitants; and has also signified to you how agreeable would be to him your co-operation in the same expedient, which you have been pleased to afford. It can scarcely be requisite to add, that there is nothing he has more at heart than that the issue of this experiment, by establishing the authority of the laws, may preclude the always calamitous necessity of an appeal to arms. It would plant a thorn in the remainder of his path through life, to have been obliged to employ force against fellow-citizens, for giving solidity and permanency to blessings which it has been his greatest happiness to co-operate with them in procuring for a much-loved country.

The President receives with much pleasure the assurance you have repeated to him, that whatever requisition he may make, whatever duty he may impose, in pursuance of his constitutional and legal powers, will, on your part, be promptly undertaken and faithfully discharged; and acknowledging, as an earnest of this, and even more, the measures of co-operation which you are pursuing, he assures you, in return, that he relies fully on the most cordial aid and

support from you in every way which the Constitutions of the United States and of Pennsylvania shall authorize, and present or future exigencies may require.

And he requests that you will construe, with a reference to this assurance of his confidence, whatever remarks may have been made in the course of this reply to your letter, if it shall have happened that any of them have erred from a misconception of the sentiments and views which you may have meant to communicate.

With perfect respect and esteem, I have the honor to be, etc.,

EDMUND RANDOLPH,
Secretary of State.

HAMILTON TO WASHINGTON

August 12, 1794.

The Secretary of the Treasury presents his respects to the President, and sends him two letters which were received last night from Pittsburgh.

Would it not be advisable to put the garrison of Fort Franklin in the power of Major Butler, so that if he deems it advisable he may draw a part of it to his aid?

An attack from the Indians appears at present improbable, and an attack from the insurgents probable enough.

The bearer of the letters waits orders to return. Will the President suggest any thing?

HAMILTON TO CRAIG

PHILADELPHIA, August 13, 1794.

SIR:—In consequence of an arrangement of the Secretary of War, who is absent, your letter of the 3d instant has been communicated to me. It is satisfactory to receive exact intelligence of the movements of the insurgents. Your care of the interest confided to you is in every event depended upon according to circumstances. The keeping the arms and stores out of the hands of the insurgents is a matter of great importance. *It is hoped that you will personally, in the worst issue of things, find safety in the fort.* The friends of government may depend that it will not be wanting to its duty and interest upon this occasion. And can there be any doubt of the sufficiency of its means?

With much esteem, I am, etc.,

ALEXANDER HAMILTON,
For the Secretary of War.

HAMILTON TO WASHINGTON

TREASURY DEPARTMENT, August 16, 1794.

SIR:—It appears probable that advantages will result from giving to the citizens at large information on the subject of the disturbances which exist in the western part of Pennsylvania.

With this view, if no objection to the measure should occur to you, I would cause a publication to be made of the report which I had the honor to address to you, dated the 5th instant.

With the most perfect respect, etc.

TULLY [1]

To the People of the United States

I

August 23, 1794.

It has, from the first establishment of YOUR present Constitution, been predicted, that every occasion of serious embarrassment which should occur in the affairs of the government, every misfortune which it should experience, whether produced from its own faults or mistakes, or from other causes, would be the signal of an attempt to overthrow it, or to lay the foundation of its overthrow, by defeating the exercise of constitutional and necessary authorities. The disturbances which have recently broken out in the western counties of Pennsylvania, furnish an occasion of this sort. It remains to see whether the prediction which has been quoted proceeded from an unfounded jealousy, excited by partial differences of opinion, or was a just inference from causes inherent in the structure of our political institutions. Every virtuous man, every good citizen, and especially EVERY TRUE REPUBLICAN, must fervently pray, that the issue may confound and not confirm so ill-omened a prediction.

Your firm attachment to the government YOU have established, cannot be doubted.

If a proof of this were wanting to animate the confidence of your public agents, it would be sufficient to remark that as often as any attempt to counteract its

[1] These essays were written simply with a view to inform the public of the facts, and prepare the people to support the Administration at the critical moment of the insurrection.

measures appear, it is carefully prepared by strong professions of friendship to the government and disavowals of any intention to injure it. This can only result from a conviction that the government carries with it YOUR affections; and that an attack upon it, to be successful, must veil the stroke under the appearances of good will.

It is therefore very important that YOU should clearly discern, in the present instance, the shape in which a design of turning the existing insurrection to the prejudice of the government would naturally assume. Thus guarded, you will more readily discover and more easily shun the artful snares which may be laid to entangle your feelings and your judgment, and will be the less apt to be misled from the path by which alone you can give security and permanency to the blessings you enjoy, and can avoid the incalculable mischiefs incident to a subversion of the just and necessary authority of the laws.

The design alluded to, if it shall be entertained, would not appear in an open justification of the principles or conduct of the insurgents, or in a direct dissuasion from the support of the government. These methods would produce general indignation and defeat the object. It is too absurd and shocking a position to be directly maintained, that forcible resistance by a sixtieth part of the community to the representative will of the WHOLE, and to constitutional laws expressed by that will, and acquiesced in by the people at large, is justifiable or even excusable. It is a position too untenable and disgusting to be directly advocated, that the government ought not

to be supported in exertions to establish the authority of the laws against a resistance so incapable of justification or excuse.

The adversaries of good order in every country have too great a share of cunning, too exact a knowledge of the human heart, to pursue so unpromising a cause. Those among us would take upon the present occasion one far more artful, and consequently far more dangerous.

They would unite with good citizens, and perhaps be among the loudest in condemning the disorderly conduct of the insurgents. They would agree that it is utterly unjustifiable, contrary to the vital principle of republican government, and of the most dangerous tendency. But they would, at the same time, slily add, that excise laws are pernicious things, very hostile to liberty (or perhaps they might more smoothly lament that the government had been imprudent enough to pass laws so contrary to the genius of a free people), and they would still more cautiously hint that it is enough for those who disapprove of such laws to submit to them—too much to expect their aid in forcing them upon others. They would be apt to intimate further, that there is reason to believe that the Executive has been to blame, sometimes by too much forbearance, encouraging the hope that the laws would not be enforced, at other times in provoking violence by severe and irritating measures; and they would generally remark, with an affectation of moderation and prudence, that the case is to be lamented, but difficult to be remedied; that a trial of force would be delicate and dangerous; that there

is no foreseeing how or where it would end; that it is perhaps better to temporize, and by mild means to allay the ferment, and afterwards to remove the cause by repealing the exceptionable laws. They would probably also propose, by anticipation of and in concert with the views of the insurgents, plans of procrastination. They would say, if force must finally be resorted to, let it not be till after Congress has been consulted, who, if they think fit to persist in continuing the laws, can make additional provision for enforcing their execution. This, too, they would argue, will afford an opportunity for the public sense to be better known, which (if ascertained to be in favor of the laws) will give the government greater assurance of success in measures of coercion.

By these means, artfully calculated to divert YOUR attention from the true question to be decided; to combat, by prejudices against a particular system, a just sense of the criminality and danger of violent resistance to the laws; to oppose the suggestion of misconduct on the part of government to the fact of misconduct on the part of the insurgents; to foster the spirit of indolence and procrastination natural to the human mind, as an obstacle to the vigor and exertion which so alarming an attack upon the fundamental principles of public and private security demands; to distract YOUR opinion on the course proper to be pursued, and consequently on the propriety of the measures which may be pursued. They would expect (I say) by these and similar means equally insidious and pernicious, to abate YOUR just indignation at the daring affront which has been offered to YOUR

authority and your zeal for the maintenance and support of the laws; to prevent a competent force, if force is finally called forth, from complying with the call; and thus to leave the government of the Union in the prostrate condition of seeing the laws trampled under foot by an unprincipled combination of a small portion of the community, habitually disobedient to laws, and itself destitute of the necessary aid for vindicating their authority.

Virtuous and enlightened citizens of a new and happy country! ye could not be the dupes of artifices so detestable, of a scheme so fatal; ye cannot be insensible to the destructive consequences with which it would be pregnant; ye cannot but remember that the government is YOUR own work, that those who administer it are but your temporary agents; that you are called upon not to support their power, BUT YOUR OWN POWER. And you will not fail to do what your rights, your best interests, your character as a people, your security as members of society, conspire to demand of you.

TULLY.

II

August 26, 1794.

It has been observed that the means most likely to be employed to turn the insurrection in the western country to the detriment of the government, would be artfully calculated among other things "to divert your attention from the true question to be decided."

Let us see then what is this question. It is plainly this—Shall the majority govern or be governed?

shall the nation rule or be ruled? shall the general will prevail, or the will of a faction? shall there be government or no government? It is impossible to deny that this is the true and the whole question. No art, no sophistry can involve it in the least obscurity.

The Constitution *you* have ordained for yourselves and your posterity contains this express clause: "The Congress *shall have power* to lay and collect taxes, duties, imposts, and *excises*, to pay the debts, and provide for the common defence and general welfare of the United States." You have, then, by a solemn and deliberate act, the most important and sacred that a nation can perform, pronounced and decreed, that your representatives in Congress shall have power to lay *excises*. You have done nothing since to reverse or impair that decree.

Your representatives in Congress, pursuant to the commission derived from you, and with a full knowledge of the public exigencies, have laid an excise. At three succeeding sessions they have revised that act, and have as often, with a degree of unanimity not common, and after the best opportunities of knowing your sense, renewed their sanction to it, you have acquiesced in it, it has gone into general operation, and *you* have actually paid more than a million of dollars on account of it.

But the four western counties of Pennsylvania undertake to rejudge and reverse your decrees. You have said, "The Congress *shall have power* to lay *excises*." They say, "The Congress *shall not have* this power." Or, what is equivalent—they shall not

exercise it: for a *power* that may not be exercised is a nullity. Your representatives have said, and four times repeated it, "An excise on distilled spirits *shall* be collected." They say it *shall not* be collected. We will punish, expel, and banish the officers who shall attempt the collection. We will do the same by every other person who shall dare to comply with your decree expressed in the constitutional charter; and with that of your representatives expressed in the laws. The sovereignty shall not reside with you, but with us. If you presume to dispute the point by force, we are ready to measure swords with you, and if unequal ourselves to the contest, we will call in the aid of a foreign nation. We will league ourselves with a foreign power.

If there is a man among us who shall affirm that the question is not what it has been stated to be, who shall endeavor to perplex it by ill-timed declamations against excise laws, who shall strive to paralyze the efforts of the community by invectives or insinuations against the government, who shall inculcate, directly or indirectly, that force ought not to be employed to compel the insurgents to a submission to the laws, if the pending experiment to bring them to reason (an experiment which will immortalize the moderation of the government) shall fail,—such a man is not a good citizen; such a man, however he may prate and babble republicanism, is not a republican; he attempts to set up the *will* of a part against the *will* of the whole, the *will* of a *faction* against the *will* of the *nation*, the pleasure of a *few* against *your* pleasure, the violence of a lawless

combination against the sacred authority of laws pronounced under your indisputable commission.

Mark such a man, if such there be. The occasion may enable you to discriminate the *true* from *pretended republicans; your* friends from the friends of *faction.* 'T is in vain that the latter shall attempt to conceal their pernicious principles under a crowd of odious invectives against the laws. Your answer is this: "*We* have already in the constitutional act decided the point against you, and against those for whom you apologize. *We* have pronounced that *excises* may be laid, and consequently that they are not, as you say, inconsistent with liberty. Let our will be first obeyed, and then we shall be ready to consider the reasons which can be afforded to prove our judgment has been erroneous; and if they convince us, to cause them to be observed. We have not neglected the means of amending in a regular course the constitutional act. And we shall know how to make our sense be respected whenever we shall discover that any part of it needs correction. But as an earnest of this, it is our intention to begin by securing obedience to our authority, from those who have been bold enough to set it at defiance. In a full respect for the laws, we discern the reality of our power and the means of providing for our welfare as occasion may require; in the contempt of the laws we see the annihilation of our power, the possibility and the danger of its being usurped by others, and of the despotism of individuals succeeding to the regular authority of the nation." That a fate like this may never await *you*, let it be deeply imprinted in your

minds, and handed down to your latest posterity, that there is no road to *despotism* more sure or more to be dreaded than that which begins at anarchy.

Threats of joining the British are actually thrown out—how far the idea may go is not known.

TULLY.

III

August 28, 1794.

If it were to be asked, What is the most sacred duty, and the greatest source of security in a republic? the answer would be, An inviolable respect for the Constitution and laws—the first growing out of the last. It is by this, in a great degree, that the rich and the powerful are to be restrained from enterprises against the common liberty—operated upon by the influence of a general sentiment, by their interest in the principle, and by the obstacles which the habit it produces erects against innovation and encroachment. It is by this, in a still greater degree, that caballers, intriguers, and demagogues are prevented from climbing on the shoulders of faction to the tempting seats of usurpation and tyranny.

Were it not that it might require too long a discussion, it would not be difficult to demonstrate that a large and well-organized republic can scarcely lose its liberty from any other cause than that of anarchy, to which a contempt of the laws is the high-road.

But without entering into so wide a field, it is sufficient to present to your view a more simple and a more obvious truth, which is this: that a sacred re-

spect for the constitutional law is the vital principle, the sustaining energy, of a free government.

Government is frequently and aptly classed under two descriptions—a government of FORCE, and a government of LAWS; the first is the definition of despotism—the last, of liberty. But how can a government of laws exist when the laws are disrespected and disobeyed? Government supposes control. It is that POWER by which individuals in society are kept from doing injury to each other, and are brought to co-operate to a common end. The instruments by which it must act are either the AUTHORITY of the laws or FORCE. If the first be destroyed, the last must be substituted; and where this becomes the ordinary instrument of government, there is an end to liberty!

Those, therefore, who preach doctrines, or set examples which undermine or subvert the authority of the laws, lead us from freedom to slavery; they incapacitate us for a GOVERNMENT of LAWS, and consequently prepare the way for one of FORCE, for mankind must have GOVERNMENT OF ONE SORT OR ANOTHER. There are, indeed, great and urgent cases where the bounds of the Constitution are manifestly transgressed, or its constitutional authorities so exercised as to produce unequivocal oppression on the community, and to render resistance justifiable. But such cases can give no color to the resistance by a comparatively inconsiderable part of a community, of constitutional laws distinguished by no extraordinary features of rigor or oppression, and acquiesced in by the body of the community.

Such a resistance is treason against society, against liberty, against every thing that ought to be dear to a free, enlightened, and prudent people. To tolerate it, were to abandon your most precious interests. Not to subdue it, were to tolerate it. Those who openly or covertly dissuade you from exertions adequate to the occasion, are your worst enemies. They treat you either as fools or cowards, too weak to perceive your interest or your duty, or too dastardly to pursue them. They therefore merit and will, no doubt, meet your contempt. To the plausible but hollow harangue of such conspirators you cannot fail to reply, How long, ye Catilines, will ye abuse our patience?

To urge the execution of that system would manifest, it is said, an intemperate spirit; and to excite your disapprobation of that course, you are threatened with the danger of a civil war, which is called the consummation of human evil.

To crown the outrage upon your understandings, the insurgents are represented as men who understand the principles of freedom, and know the horrors and distresses of anarchy, and who, therefore, must have been tempted to hostility against the laws by a RADICAL DEFECT, EITHER in the government *or* in those intrusted with its administration. How *thin* the partition which divides the insinuation from the assertion, that the government is in fault, and the insurgents in the right!

Fellow-citizens: A name, a sound, has too often had influence on the affairs of nations; an EXCISE has too long been the successful watchword of party. It

has even sometimes led astray well-meaning men. The experiment is now to be tried whether there be any spell in it of sufficient force to unnerve the arm which may be found necessary to be raised in defence of law and order.

The jugglers who endeavor to cheat us with the sound, have never dared to venture into the fair fields of argument. They are conscious that it is easier to declaim than to reason on the subject. They know it to be better to play a game with the passions and prejudices, than to engage seriously with the understanding of the auditory. You have already seen that the merits of excise laws are immaterial to the question to be decided, that you have prejudged the point by a solemn constitutional act, and that until you shall have revoked or modified that act, resistance to its operation is a criminal infraction of the social compact, an inversion of the fundamental principles of republican government, and a daring attack upon YOUR sovereignty, which you are bound, by every motive of duty and self-preservation, to withstand and defeat. The matter might safely be suffered to rest here; but I shall take a future opportunity to examine the reasonableness of the prejudice which is inculcated against excise laws, and which has become the pretext for excesses tending to dissolve the bands of society.

Fellow-citizens: You are told that it will be intemperate to urge the execution of the laws which are resisted. What? Will it be indeed intemperate in your Chief Magistrate, sworn to maintain the Constitution, charged faithfully to execute the laws, and

authorized to employ for that purpose force, when the ordinary means fail—will it be intemperate in him to exert that force, when the Constitution and the laws are opposed by force? Can he answer it to his conscience, to you, not to exert it?

Yes, it is said; because the execution of it will produce civil war—the consummation of human evil.

Fellow-citizens: Civil war is, undoubtedly, a great evil. It is one that every good man would wish to avoid, and will deplore if inevitable. But it is incomparably a less evil than the destruction of government. The first brings with it serious but temporary and partial ills; the last undermines the foundations of our security and happiness. And where should we be if it were once to grow into a maxim, that force is not to be used against the seditious combinations of parts of the community to resist the laws? This would be to give a CARTE BLANCHE to ambition, to licentiousness, to foreign intrigue, to make you the prey of the gold of other nations—the sport of the passions and vices of individuals among yourselves. The hydra Anarchy would rear its head in every quarter. The goodly fabric you have established would be rent asunder, and precipitated into the dust. You knew how to encounter civil war rather than surrender your liberty to foreign domination; you will not hesitate now to brave it rather than to surrender your sovereignty to the tyranny of a faction; you will be as deaf to the apostles of anarchy now as you were to the emissaries of despotism then. Your love of liberty will guide you now as it did then; you know that the POWER of the majority and LIBERTY

are inseparable. Destroy that, and this perishes. But, in truth, that which properly can be called civil war is not to be apprehended—unless from the act of those who endeavor to fan the flame, by rendering the government odious. A civil war is a contest between two GREAT parts of the same empire. The exertion of the strength of the nation to suppress resistance to its laws, by a sixtieth part of itself, is not of that description.

After endeavoring to alarm you with the horrors of civil war, an attempt is made to excite your sympathy in favor of the armed faction, by telling you that those who compose it are men who understand the principles of freedom, and know the horrors and distresses of anarchy, and must therefore have been prompted to hostility against the laws by a radical defect EITHER in the government OR in its administration. Fellow-citizens, for an answer to this you have only to consult your senses. The natural consequences of radical defect in a government, or in its administration, are national distress and suffering. Look around you—where is it? Do you feel it? Do you see it?

Go in quest of it beyond the Alleghany, and instead of it you will find that there also a scene of unparalleled prosperity upbraids the ingratitude and madness of those who are endeavoring to cloud the bright face of our political horizon, and to mar the happiest lot that beneficent Heaven ever indulged to undeserving mortals.

When you have turned your eyes towards that scene, examine well the men whose knowledge of the

principles of freedom is so emphatically vaunted—where did they get their better knowledge of those principles than that which you possess? How is it that you have been so blind or tame as to remain quiet, while they have been goaded into hostility against the laws by a RADICAL DEFECT in the government or its administration? Are you willing to yield them the palm of discernment, of patriotism, or of courage?

TULLY.

IV

September 2, 1794.

The prediction mentioned in my first letter begins to be fulfilled. Fresh symptoms every moment appear of a dark conspiracy, hostile to your government, to your peace abroad, to your tranquillity at home. One of its orators dares to prostitute the name of FRANKLIN by annexing it to a publication as insidious as it is incendiary. Aware of the folly and the danger of a direct advocacy of the cause of the insurgents, he makes the impudent attempt to enlist your passions in their favor by false and virulent railings against those who have heretofore represented you in Congress. The foreground of the piece presented you with a bitter invective against that wise, moderate, and pacific policy, which in all probability will rescue you from the calamities of a foreign war, with an increase of new dignity and with additional lustre to the American name and character. Your representatives are delineated as corrupt, pusillanimous, and unworthy of your confidence; because they did not

plunge headlong into measures which might have rendered war inevitable; because they contented themselves with preparing for it, instead of making it, leaving the path open to the Executive for one last and solemn effort of negotiation; because they did not dispay either the promptness of gladiators, or the blustering of bullies, but assumed that firm yet temperate attitude which alone is suited to the representatives of a brave but rational people; who deprecated war, though they did not fear it; and who have a great and solid interest in peace, which ought only to be abandoned when it is unequivocally ascertained that the sacrifice is absolutely due to the vindication of their honor and the preservation of their essential rights; because, in fine, your representatives wished to give an example to the world, that the boasted moderation of republican governments was not (like the patriotism of our political barkers) an empty declaration, but a precious reality.

The sallies of a momentary sensibility, roused and stung by injury, were excusable. It was not wonderful that the events of war were under the first impressions heard from good and prudent men. But to revive them at this late hour, when fact and reflection unite to condemn them; to arraign a conduct which has elevated the national character to the highest point of true glory; to hope to embark you in the condemnation of that conduct, and to make your indignation against it useful to the cause of insurrection and treason, are indications of a wrong-headedness, perverseness, or profligacy, for which it is not easy to find terms of adequate reprobation.

Happily the plotters of mischief knew ye not. They derive what they mistake for your image from an original in their own heated and crooked imaginations, and they hope to mould a wise, reflecting, and dispassionate people to purposes which presuppose an ignorant, unthinking, and turbulent herd.

But the declamation against your representatives for their love of peace is but the preface to the main design. That design is to alienate you from the support of the laws, by the spectre of an odious excise system, baneful to liberty, engendered by corruption, and nurtured by the INSTRUMENTALITY (favored word, fruitful source of mountebank wit) of the enemies of freedom.

TULLY.

HAMILTON TO CRAIG

WAR DEPARTMENT, August 25, 1794.

SIR:—Your letter of the 17th instant to the Secretary of War has been received and duly attended to.

The suggestions respecting additional measures of defence have been considered; but the danger of the means falling into the hands of the insurgents appears at present an objection.

It is hoped that every thing at Pittsburgh, or which shall come there, not necessary to the post itself, has been forwarded down the river, and will continue to be so, as long and as fast as it can be done with safety. The friends of government at Pittsburgh ought to rally their confidence, and, if necessary, manifest it by acts. They cannot surely doubt the

power of the United States to uphold the authority of the laws; and they may be assured, that the necessity of doing it, towards preserving the very existence of government, so directly attacked, will dictate and produce a most vigorous and persevering effort, in which the known good sense and love of order of the quiet body of the people, and all the information hitherto received of their sentiments and feelings with regard to the present emergency, authorize a full expectation of their hearty co-operation.

SECRETARY OF STATE TO MIFFLIN

Draft by Hamilton.

PHILADELPHIA, August 30, 1794.

SIR:—I am directed by the President to acknowledge the receipt on the 17th of your excellency's letter, dated on the 12th instant.

The President feels with you the force of the motives which render undesirable an extension of correspondence on the subject in question. But the case being truly one of great importance and delicacy, these motives must yield in a degree to the propriety and utility of giving precision to every part of the transaction, and guarding effectually against ultimate misapprehension.

To this end it is deemed advisable, in the first place, to state some facts, which either do not appear, or are conceived not to have assumed an accurate shape in your excellency's letter. They are these:

1. You were informed at the conference that all the information which had been received had been laid before an associate justice, in order that he might consider and determine whether such a case as is contemplated by the second section of the act, which provides for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions, had occurred; that is, whether combinations existed too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshal by that act; in which case the President is authorized to call forth the militia to suppress the combinations and to cause the laws to be duly executed.

2. The idea of a preliminary proceeding by you was pointed to an eventual co-operation with the Executive of the United States, in such plan as, upon mature deliberation, should be deemed advisable, in conformity with the laws of the Union. The inquiry was particularly directed towards the possibility of some previous accessory step in relation to the militia, to expedite the calling them forth if an acceleration should be judged expedient and proper, and if any delay on the score of evidence should attend the notification from a judge, which the laws make the condition of the power of the President to require the aid of the militia, and turned more especially upon the point whether the law of Pennsylvania, of the 22d September, 1783, was or was not still in force. The question emphatically was: Has the executive of Pennsylvania power to put the militia in motion, previous to a requisition from the

President, under the laws of the Union, if it shall be thought advisable so to do? Indeed it seems to be admitted by one part of your letter, that the preliminary measure contemplated did turn on this question, and with a particular eye to the authority and existence of the act just mentioned.

3. The information contained in the papers read at the conference, besides the violence offered to the marshal while in company with the inspector of the revenue, established that the marshal had been afterwards made prisoner by the insurgents, put in jeopardy of his life, had been obliged to obtain safety and liberty by a promise, guaranteed by Colonel Presley Neville, that he would serve no other process on the west side of the Alleghany Mountains; that, in addition to this, a deputation of the insurgents had gone to Pittsburgh, to demand of the marshal a surrender of the processes in his possession, under the intimation that it would satisfy the people *and add to his safety*, which necessarily implied that he would be in danger of further violence without such a surrender; that under the influence of this menace, he had found it necessary to seek security by taking, secretly, and in the night, a circuitous route.

This recapitulation is not made to invalidate the explanation offered in your last letter, of the view of the subject which you assert to have led to the suggestions contained in your first, and of the sense which you wish to be received as that of the observations accompanying those suggestions. It is intended solely to manifest that it was natural for the President to regard your communication of the 5th instant

in the light under which it is presented in the reply to it.

For having informed you that the matter was before an associate justice, with a view to the law of the United States, which has been mentioned, and having pointed out what was said respecting a *preliminary* proceeding on your part to a call of the militia under the authority of a State law, by anticipation of a requisition from the General Government, and in co-operation with an eventual plan to be founded on the laws of the Union, it was not natural to expect that it would have presented a plan of conduct entirely on the basis of the State government, even to the extent of resorting to the Legislature of Pennsylvania, after its judiciary had proved incompetent "to prescribe by their wisdom and authority the means of subduing the spirit of insurrection and of restoring tranquillity and order," a plan which, being incompatible with the course marked out in the laws of the United States, evidently could not have been acceded to without a suspension, for a long and indefinite period, of the movements of the federal Executive pursuant to those laws. The repugnancy and incompatibility of the two modes of proceeding at the same time cannot, it is presumed, be made a question.

Was it extraordinary, then, that the plan suggested should have been unexpected, and that it should even have been thought liable to the observation of having contemplated Pennsylvania in a light too separate and unconnected?

The propriety of the remark, "that it was impossi-

ble not to think the current of the observations in your letter might be construed to imply a virtual disapprobation of that plan of conduct on the part of the Government of Pennsylvania, if arrived at a similar stage," must be referred to the general tenor and complexion of those observations, and to the inference they were naturally calculated to inculcate. If this inference was, that under the known circumstances of the case, the employment of force to suppress the insurrection was improper, without a long train of preparatory expedients; and if, in fact, the Government of the United States (which has not been controverted) was at that point where it was admitted that the Government of Pennsylvania being arrived the resort to force on its part would be proper, the impression which was made could not have been effaced by the consideration that the forms of referring what concerned the government of the Union to the judgment of its own Executive, were carefully observed. There was no difficulty in reconciling the intimation of an opinion unfavorable to a particular course of proceeding, with an explicit reference of the subject (officially speaking) to the judgment of the officer charged by the Constitution to decide, and with a sincere recognition of the subjection of the individual authority of the State to the national jurisdiction of the Union.

The disavowal by your excellency of an intention to sanction the inference which was drawn, renders what has been said a mere explanation of the cause of that inference, and of the impressions which it *at first* made.

It would be foreign to the object of this letter to discuss the various observations, which have been adduced to obviate a misapprehension of your views, and to maintain the propriety of the course pursued in your first communication. It is far more pleasing to the President to understand you in the sense you desire, and to conclude that no opinion has been indicated by you inconsistent with that which he has entertained of the state of things and of his duty in relation to it. And he remarks, with satisfaction, the effect which subsequent information is supposed to be calculated to produce favoring an approximation of sentiments.

But there are a few miscellaneous points which, more effectually to prevent misconceptions anywhere, seem to demand a cursory notice.

You observe that the President had *already determined* to exercise his legal powers in drafting a competent force of the militia. At the point of time to which you are understood to refer—namely, that of the conference, the President *had no legal power* to call forth the militia. No judge had yet pronounced that a case justifying the exercise of that power existed. You must be sensible, sir, that all idea of your calling out the militia by your authority, was referred to a state of things antecedent to the lawful capacity of the President to do it by his own authority; and when he had once determined upon the call, pursuant to his legal powers, it were absurd to have proposed to you a separate and unconnected call. How, too, it might be asked, could such a determination, if it had been made, and was known to you, have com-

ported with the plan suggested in your letter, which pre-supposes that the employment of force had not already been determined upon?

This passage of your letter is, therefore, considered to mean only that the President had manifested an opinion predicated upon the event of such a notification from a judge as the law prescribes, that the nature of the case was such as would probably require the employment of force. You will also, it is believed, recollect that he had not at the time finally determined upon any thing, and that the conference ended with referring the whole subject to further consideration.

You say, that if you had undertaken not only to comply promptly with the President's requisition, but to embody a distinct corps for the same service, a useless expense would have been incurred by the State, an unnecessary burden would have been imposed on the citizens, and embarrassment and confusion would probably have been introduced instead of system and co-operation. *But they were never expected.* Your embodying the militia independent of a requisition from the President, was never thought of, except as a preliminary and auxiliary step. Had it taken place when the requisition came, the corps embodied would have been ready toward a compliance with it, and no one of the inconveniences suggested could possibly have risen.

You say, in another place, that you "were called *upon to act*, not in conformity to a positive law, but in compliance with the duty which is supposed to result from the nature and constitution of the executive

office." It is conceived that it would have been more correct to have said, "you were called upon *to be consulted* whether you had power in the given case to call forth the militia without a previous requisition from the General Government." The supposition that you might possess this power was referred to a law of Pennsylvania, which appeared, on examination, to have been repealed. A gentleman who accompanied you thought that the power, after a due notification of the incompetency of the judiciary, might be deduced from the nature and constitution of the executive office.

It has appeared to your excellency fit and expedient to animadvert upon the nature of the evidence produced at the conference, and to express some doubts which had occurred to your mind concerning it.

As the laws of the United States have referred the evidence in such cases to the judgment of a district judge, or associate justice, and, foreseeing that circumstances so peculiar might arise as to render rules relating to the ordinary and peaceable state of society inapplicable, have forborne to prescribe any, leaving it to the understanding and conscience of the judge, upon his responsibility, to pronounce what kind and degree of evidence should suffice, the President would not sanction a discussion of the standard or measure by which evidence in those cases ought to be governed. He would restrain himself by the reflection that this appertains to the province of another, and that he might rely as a guide upon the decision which should be made by the proper organ of the laws for that purpose.

But it may be no deviation from this rule to notice to you that the facts stated in the beginning of this letter, under the third head, appear to have been overlooked in your survey of the evidence, while they seem to be far from immaterial to a just estimate of it.

You remark that "when you found that the marshal had, without molestation, executed his office in the county of Fayette, that he never was insulted or opposed till he acted in company with General Neville, and that the virulence of the rioters was directly manifested against the person and property of the latter gentleman, and only incidentally against the person of the former, you thought there was ground yet to suppose that a spirit of opposition to the officers employed under the excise law, *and not a spirit of opposition to the officers employed in the administration of justice*, was the immediate source of the outrages which are deprecated."

It is natural to inquire how this supposition could consist with the additional facts which appeared by the same evidence, namely, that the marshal, having been afterward made prisoner by the rioters, had been compelled, for obtaining safety and liberty, to promise to execute no more processes within the discontented scene; and that subsequently again to this, in consequence of a deputation of the rioters deliberately sent to demand a surrender of the processes in his possession, enforced by a threat, he had found it necessary to seek security in withdrawing by a secret and circuitous route; did not these circumstances unequivocally denote that officers *employed in the*

administration of justice were as much objects of opposition as those employed in the execution of the particular laws, and that the rioters were at least consistent in their plan?

It must needs be, that these facts escaped your excellency's attention, else they are too material to have been omitted in your review of the evidence, and too conclusive not to have set aside the supposition which you entertained, and which seemed to have had so great a share in your general view of the subject.

There remains only one point on which your excellency will be longer detained—a point, indeed, of great importance, and which consequently demands serious and careful reflection. It is the opinion you so emphatically express, that the mere *dispersion* of the insurgents is the sole object for which the militia can be called out, or kept in service after they may have been called out.

The President reserves to the last moment the consideration and decision of this point.

But there are arguments weighing heavily against the opinion you have expressed, which, in the meantime, are offered to your candid consideration.

The Constitution of the United States (article 1, section 8) empowers Congress "to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions," evidently, from the wording and distribution of the sentence, contemplating the execution of the laws of the Union as a thing distinct from the suppression of insurrections.

The act of May 2, 1792, for carrying the provision of the Constitution into effect, adopts for its title the very words of the Constitution, being "An act to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions," continuing the constitutional distinction.

The first section of the act provides for the cases of invasion and of insurrection, confining the latter to the case of insurrection against the government of a State. The second section provides for the case of the execution of the laws being obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals.

The words are these: "Whenever the laws of the United States shall be opposed, or the execution thereof obstructed, in any State, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by this act, the same being notified to the President of the United States by an associate judge, or the district judge, it shall be lawful for the President of the United States to call forth the militia of such State *to suppress such combinations, and to cause the laws to be duly executed.*" Then follows a provision for calling forth the militia of other States.

The terms of this section appear to contemplate and describe something that may be less than insurrection. "The combinations" mentioned may indeed amount to insurrections, but it is conceivable that they may stop at associations not to comply with the law, supported by riots, assassinations, and

murders, and by a general spirit in a part of the community, which may baffle the ordinary judiciary means, with no other aid than the posse comitatus, magistrates, and officers in the execution of their duty. And the objects for which the militia are to be called are expressly *not only* to suppress these combinations (whether amounting to insurrections or not), *but to cause the laws to be duly executed.*

It is therefore plainly contrary to the manifest general intent of the Constitution and of this act, and to the positive and express terms of the second section of the act, to say that the militia called forth are not to be continued in service for the purpose of *causing the laws to be duly executed*, and, of course, till they are so executed.

What is the main and ultimate object of calling forth the militia? "To cause the laws to be executed." Which are the laws to be executed? Those which are opposed and obstructed in their execution by the combinations described in the present case—the laws laying duties upon spirits distilled within the United States, and upon stills; and incidentally those which uphold the judiciary functions. When are the laws executed? Clearly, when the opposition is subdued; when penalties for disobedience can be enforced; when a compliance is effectuated.

Would the mere *dispersion* of insurgents, and their retiring to their respective homes, do this? Would it satisfy either member of the provision—the suppression of the combinations or the execution of the laws? Might not the former, notwithstanding the *dispersion*, continue in full vigor, ready at any

moment to break out into new acts of resistance to the laws? Are the militia to be kept perpetually marching and counter-marching towards the insurgents while they are embodied, and from them when they have separated and retired? Suppose the insurgents, hardy enough to wait the experiment of a battle, are vanquished, and then disperse and retire home, are the militia immediately to retire also? to give them an opportunity to reassemble, recruit, and prepare for another battle? And is this to go on, and be repeated without limit?

Such construction of the law, if true, were certainly a very unfortunate one, rendering its provisions essentially nugatory, and leading to endless expense, and as endless disappointment. It could hardly be advisable to vex the militia, by marching them to a distant point, where they might scarcely be arrived before it would be legally necessary for them to return, not in consequence of having effected their object—of having "caused the laws to be executed," —but in consequence of the mere stratagem of a deceitful dispersion and retiring.

Thus far the spirit as well as the positive letter of the law combats the construction which you have adopted. It remains to see if there be any other part of it which compels to a renunciation both of the letter and spirit of the antecedent provisions.

The part which seems to be relied upon for this effect, is the third section, which by way of proviso enjoins, "That whenever it may be necessary, in the judgment of the President, to *use* the military force

by that act directed to be called forth, he shall, forthwith, and previous thereto, by proclamation, command the insurgents to disperse and retire peaceably to their respective abodes, within a limited time." But does this affirm, does it necessarily even imply, that they, after the dispersion and retiring, are not to be used for the purpose for which they are authorized to be called forth, that is, "to cause the laws to be duly executed," to countenance by their presence, and, in case of further resistance, to protect and support by their strength, the respective civil officers in the execution of their several duties, whether for bringing delinquents to punishment, or otherwise for giving effect to the laws? May not the injunction of this section be regarded as a merely humane and prudent precaution, to distinguish, previous to the *actual application* of force, a hasty tumult from a deliberate insurrection? to give an opportunity for those who may be accidentally or inadvertently mingled in a tumult or disorderly rising, to separate and withdraw from those who are designedly and deliberately actors? to prevent, if possible, bloodshed in a conflict of arms, and, if this cannot be done, to render the necessity of it palpable, by a premonition to the insurgents to disperse and go home? And are not all these objects compatible with the further employment of the militia for the ulterior purpose of causing the laws to be executed in the way which has been mentioned? If they present a rational end for the proviso, without defeating the main design of the antecedent provision, it is clear they ought to limit the sense of the former, and exclude a con-

struction which must make the principal provision nugatory.

Do not the rules of law and reason unite in declaring that the different parts of a statute shall be so construed, as, if possible, to consist with each other; that a *proviso* ought not to be understood or allowed to operate in a sense tending to defeat the principal clause; and that an implication (if, indeed, there be any such implication as is supposed in the present case) ought not to overrule an express provision, especially at the sacrifice of the *manifest general intent* of a law, which, in the present case, undoubtedly is, that the militia shall be called forth "*to cause the laws to be duly executed*"?

Though not very material to the merit of the argument, it may be remarked, that the proviso which forms the third section, contemplates merely the case of insurrection. If the *combinations* described in the second section may be less than insurrection, then the proviso is not commensurate with the whole case contained in the second section, which would be an additional circumstance to prove that it cannot work an effect which shall be a substitute for the main purpose of the first section.

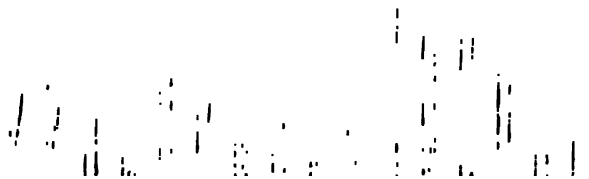
I have the honor to be, with perfect respect, sir, your excellency's most obedient servant.

HAMILTON TO WASHINGTON

PHILADELPHIA, September 19, 1794.

SIR:—Upon full reflection I entertain an opinion that it is advisable for me, on public grounds,

[redacted]



vania, would yield to time and reflection, I thought it sufficient, in the first instance, rather to *take measures* for calling forth the militia than immediately to *embody* them; but the moment is now come when the overtures of forgiveness, with no other condition than a submission to law, have been only partially accepted; when every form of conciliation, not inconsistent with the being of government, has been adopted without effect; when the well-disposed in those counties are unable by their influence and example to reclaim the wicked from their fury, and are compelled to associate in their own defence; when the proffered lenity has been perversely misinterpreted into an apprehension that the citizens will march with reluctance; when the opportunity of examining the serious consequences of a treasonable opposition has been employed in propagating principles of anarchy, endeavoring, through emissaries, to alienate the friends of order from its support, and inviting its enemies to perpetrate similar acts of insurrection; when it is manifest that violence would continue to be exercised upon every attempt to enforce the laws; when, therefore, government is set at defiance, the contest being whether a small portion of the United States shall dictate to the whole Union, and at the expense of those who desire peace indulge a desperate ambition. Now, therefore, I, George Washington, President of the United States, in obedience to that high and irresistible duty consigned to me by the Constitution, "to take care that the laws be faithfully executed," deploring that the American name should be sullied by the outrages of citizens on

their own government; commiserating such as remain obstinate from delusion; but resolved, in perfect reliance on that gracious Providence which so signally displays its goodness towards this country, to reduce the refractory to a due subordination to the law, do hereby declare and make known that, with a satisfaction which can be equalled only by the merits of the militia summoned into service from the States of New Jersey, Pennsylvania, Maryland, and Virginia, I have received intelligence of their patriotic alacrity in obeying the call of the present, though painful, yet commanding necessity; that a force, which according to every reasonable expectation is adequate to the exigency, is already in motion to the scene of disaffection; that those who have confided, or shall confide in the protection of government, shall meet full succor under the standard and from the arms of the United States; that those who, having offended against the law, have since entitled themselves to indemnity, will be treated with the most liberal good faith, if they shall not have forfeited their claim by any subsequent conduct, and that instructions are given accordingly. And I do, moreover, exhort all individuals, officers, and bodies of men, to contemplate with abhorrence the measures leading directly or indirectly to those crimes which produce this resort to military coercion; to check, in their respective spheres, the efforts of misguided or designing men to substitute their misrepresentations in the place of truth, and their discontents in the place of stable government; and to call to mind that, as the people of the United States have been per-

mitted, under the Divine favor, in perfect freedom, after solemn deliberation and in an enlightened age, to elect their own government, so will their gratitude for this inestimable blessing be best distinguished by firm exertions to maintain the Constitution and the laws. And, lastly, I again warn all persons whomsoever and wheresoever, not to abet, aid, or comfort the insurgents aforesaid, as they will answer the contrary at their peril; and I do also require all officers and other citizens, according to their several duties, as far as may be in their power, to bring under the cognizance of the law all offenders in the premises.

In testimony whereof I have caused the seal of the United States of America to be affixed to these presents, and signed the same with my hand.

[L. S.] Done at the city of Philadelphia, the twenty-fifth day of September, one thousand seven hundred and ninety-four, of the independence of the United States of America the nineteenth

GEORGE WASHINGTON.

By the President,
EDMUND RANDOLPH.

HAMILTON TO LEE

BEDFORD, October 20, 1794.

SIR:—I have it in special instruction from the President of the United States, now at this place, to convey to you the following instructions for the general direction of your conduct in the command of the militia army, with which you are charged.

The objects for which the militia have been called forth are:

1st. To suppress the combinations which exist in some of the western counties in Pennsylvania, in opposition to the laws laying duties upon spirits distilled within the United States, and upon stills.

2d. To cause the laws to be executed.

These objects are to be effected in two ways:

1. By military force.

2. By judiciary process and other civil proceedings.

The objects of the military force are twofold:

1. To overcome any armed opposition which may exist.

2. To countenance and support the civil officers in the means of executing the laws.

With a view to the first of these two objects, you will proceed, as speedily as may be, with the army under your command, into the insurgent counties, to attack and, as far as shall be in your power, subdue all persons whom you may find in arms in opposition to the laws above mentioned. You will march your army in two columns, from the places where they are now assembled, by the most convenient routes, having regard to the nature of the roads, the convenience of supply, and the facility of co-operation and union; and bearing in mind that you ought to act, till the contrary shall be fully developed, on the general principle of having to contend with the whole force of the counties of Fayette, Westmoreland, Washington, and Alleghany, and of that part of Bedford which lies west of the town of Bedford; and that you are to put as little as possible to hazard.

The approximation, therefore, of your columns is to be sought, and the subdivision of them, so as to place the parts out of mutual supporting distance, to be avoided as far as local circumstances will permit. Parkinson's Ferry appears to be a proper point towards which to direct the march of the columns for the purpose of ulterior measures.

When arrived within the insurgent country, if an armed opposition appear, it may be proper to publish a proclamation, inviting all good citizens, friends of the Constitution and laws, to join the standard of the United States. If no armed opposition exist, it may still be proper to publish a proclamation, exhorting to a peaceable and dutiful demeanor, and giving assurances of performing, with good faith and liberality, whatsoever may have been promised by the commissioners to those who have complied with the conditions prescribed by them, and who have not forfeited their title by subsequent misconduct.

Of those persons in arms, if any, whom you may make prisoners, leaders, including all persons in command, are to be delivered up to the civil magistrate; the rest to be disarmed, admonished, and sent home (except such as may have been particularly violent, and also influential), causing their own recognizance for their good behavior to be taken, in the cases in which it may be deemed expedient.

With a view to the second point, namely, "the countenance and support of the civil officers in the means of executing the laws," you will make such dispositions as shall appear proper to countenance and protect, and, if necessary, and required by them,

to support and aid the civil officers in the execution of their respective duties; for bringing offenders and delinquents to justice; for seizing the stills of delinquent distillers, as far as the same shall be deemed eligible by the supervisor of the revenue, or chief officer of inspection; and also for conveying to places of safe custody such persons as may be apprehended and not admitted to bail.

The objects of judiciary process, and other civil proceedings, will be:

1. To bring offenders to justice.

2. To enforce penalties on delinquent distillers by suit.

3. To enforce the penalty of forfeiture on the same persons, by the seizure of their stills and spirits.

The better to effect these purposes, the judge of the district, Richard Peters, Esquire, and the attorney of the district, William Rawle, Esquire, accompany the army.

You are aware that the judge cannot be controlled in his functions; but I count on his disposition to co-operate in such a general plan as shall appear to you consistent with the policy of the case. But your method of giving a direction to legal proceedings, according to your general plan, will be by instruction to the district attorney.

He ought particularly to be instructed (with due regard to time and circumstances): 1st. To procure to be arrested all influential actors in riots and unlawful assemblies relating to the insurrection, and combinations to resist the laws, or having for object to abet that insurrection and those combinations, and

who shall not have complied with the terms offered by the commissioners, or manifested their repentance in some other way which you may deem satisfactory. 2d. To cause process to issue for enforcing penalties on delinquent distillers. 3d. To cause offenders who may be arrested, to be conveyed to jails where there will be no danger of rescue: those for misdemeanors, to the jails of York and Lancaster; those for capital offences, to the jail of Philadelphia, as more secure than the others. 4th. To prosecute indictable offences in the courts of the United States; those for penalties on delinquents, under the laws before mentioned, in the courts of Pennsylvania.

As a guide in the case, the district attorney has with him a list of the persons who have availed themselves of the offers of the commissioners on the day appointed.

The seizure of stills is the province of the supervisor and other officers of inspection. It is difficult to chalk out the precise line concerning it. There are opposite considerations which will require to be nicely balanced, and which must be judged of by those officers on the spot. It may be found useful to confine the seizures to stills of the most leading and refractory distillers. It may be advisable to extend them far in the most refractory county.

When the insurrection is subdued, and the requisite means have been put in execution to secure obedience to the laws, so as to render it proper for the army to retire (an event which you will accelerate as much as shall be consistent with the object), you will endeavor to make an arrangement for detaching such

a force as you deem adequate, to be stationed within the disaffected country, in such a manner as best to afford protection to well-disposed citizens and to the officers of the revenue, and to repress, by their presence, the spirit of riot and opposition to the laws.

But before you withdraw the army, you will promise, on behalf of the President, a general pardon to all such as shall not have been arrested, with such exceptions as you shall deem proper. The promise must be so guarded as not to affect pecuniary claims under the revenue laws. In this measure, it is advisable there should be a co-operation with the Governor of Pennsylvania.

On the return of the army you will adopt some convenient and certain arrangement for restoring to the public magazines, the arms, accoutrements, military stores, tents, and other articles of camp equipage and intrenching tools, which have been furnished, and shall not have been consumed or lost.

You are to exert yourselves by all possible means to preserve discipline among the troops, particularly a scrupulous regard to the rights of persons and property, and to a respect for the authority of the civil magistrate; taking especial care to inculcate and cause to be observed this principle: that the duties of the army are confined to the attacking and subduing of armed opponents of the laws, and to the supporting and aiding of the civil officers in the execution of their functions.

It has been settled that the Governor of Pennsylvania will be second, the Governor of New Jersey third in command, and that the troops of the several

States in line, on the march and upon detachment, are to be posted according to the rule which prevailed in the army during the late war—namely, in moving towards the sea-board, the most southern troops will take the right; in moving westward, the most northern will take the right.

These general instructions, however, are to be considered as liable to such alterations and deviations in the detail, as from local and other causes may be found necessary, the better to effect the main object upon the general principles which have been indicated.

With great respect, I have the honor to be, sir,

Your obedient servant,

ALEXANDER HAMILTON.

To Major-General LEE.

HAMILTON TO WASHINGTON

BERLIN, 3d day's march, October 25, 1794, 7 o'clock in the evening.

SIR:—We arrived here this afternoon. A very heavy rain has rendered the march extremely arduous and distressing; but we find here much better shelter than was foreseen. Our baggage and stores are just beginning to arrive. The Jersey line and brigade of cavalry took the right-hand road, about five miles back.

To-morrow we shall continue our march, and I hope that we shall conform to the general arrangement, though we must shorten to-morrow's march, and lengthen that of the day following.

The troops have shown all the patience that could

have been expected. In short, I perceive nothing amiss.

Bradford and Fulton, it is said, are gone off. By tracing time, it is not probable they were at all influenced by the arrests of Husbands and Phelson.

With the highest respect, and truest attachment, I have the honor to be, etc.

HAMILTON TO WASHINGTON

BERLIN, October 26, 1794.

SIR:—The very late arrival of the wagons, the injury to a number of them, and the dispersed situation of the troops, render it impracticable to leave this place to-day, as was intended; but the baggage and stores go forward, and to-morrow the troops must move. I apprehend no material derangement of the general plan. An express has been despatched to Governor Lee, advising him of the state of things here.

Nothing from the western country.

With the greatest respect and attachment, etc.

HAMILTON TO WASHINGTON

JONES' MILL, October 29, 1794.

SIR:—The light corps, with the Jersey infantry and brigade of cavalry, are at Indian Creek, in Legnoier Valley, where they continue till this division gets up, which will be this evening, as the march will commence in an hour. This division had, I believe, the worst road, and was, besides, encumbered with all the spare stores, which has thrown it a day's

march behind the other. But by a letter received yesterday from Governor Lee, it appears that the right wing is fully in measure with the left. All is essentially well with both wings, and the troops continue to show as much good humor as could possibly have been expected.

The meeting at Parkinson's Ferry ended, *we are told*, in a new appointment of commissioners to deprecate the advance of the army, and in new expressions of pacific intentions. But there is nothing which can occasion a question about the propriety of the army's proceeding to its ultimate destination. No appearances whatever of opposition occur.

You desired that a table of the routes of the left wing might be sent you. None was left with any officer of this wing.

With the truest respect and attachment,

I have the honor to be, sir,

Your obd't serv't, etc.

P. S.—It is hoped that the original papers have been forwarded, as the list furnished from the Secretary of State's office would be a deceptive guide. Memoranda of the Attorney-General, brought by this express, will greatly aid, perhaps sufficiently; but the originals would be best.

HAMILTON TO WASHINGTON

CAMP, 1½ miles beyond Cherry's Mill,
October 31, 1794.

SIR:—The New Jersey infantry and brigade of cavalry are at this place. The Pennsylvania in-

fantry will be here this evening. The light corps is advanced about two miles. No official account since that heretofore communicated has come from the left wing. But a person who came from Uniontown, yesterday, informs that *Morgan*, with the advance, was there; the main body about twenty miles behind. I propose in about an hour to set out for Uniontown.

All announces trepidation and submission. The new commissioners have been with Governor Mifflin, charged with new declarations by townships, battalions of militia, etc., of a disposition to obey the laws. The impression is certainly for the present strong, but it will be stronger and more permanent by what is to follow. It does not appear that any great number have fled.

With the truest respect and attachment, I have the honor to be, etc.

HAMILTON TO WASHINGTON

CHERRY'S MILL, November 3, 1794.

SIR:—I have returned to this place, from Uniontown. A letter from Governor Lee, which goes with this, probably informs you of the plan of future operations; but, lest it should not, I will briefly state it. The right wing is to take a position with its left towards Budd's Ferry, and its right towards Greensburgh. The left wing is to be posted between the Youghiogheny and Monongahela, with its left towards the latter, and its right towards the former. Morgan, with his command, including the

whole of the light corps, and perhaps a part of the brigade of cavalry, will go into Washington County. It is not unlikely that, in the course of the business, a part of the troops will take a circuit by Pittsburgh; for the more places they can appear in, without loss of time, the better.

In adopting this plan, the circumstance of much delay in crossing and recrossing waters has weighed powerfully; and the quiescent state of the country renders the plan entirely safe. Boats, however, will be collected on both waters, to facilitate mutual communication and support.

I received the letter you were so good as to write me, on the road, with those that accompanied it.

The rainy weather continues, with short intervals of clear. The left wing has suffered from sickness, but the right has been and continues remarkably healthy. The troops also continue to behave well. A court-martial sits to-day, to try one or two riotous fellows, and one or two marauders. The appointment of it has checked the licentious corps.

With the truest respect and attachment,

I have the honor to be, etc.

P. S.—Not many fugitives from justice as yet.

HAMILTON TO WASHINGTON

HEAD-QUARTERS, ROSHAVEN TOWNSHIP,
November 8, 1794.

SIR:—Morgan, with the whole of the light troops, has crossed into Washington County. Dispositions

of different corps are making to strike at once into the most disaffected scenes.

It appears evident, that to wait for preliminary investigations to apprehend the guilty upon process, would defeat the object, and produce delay beyond the patience of the troops, or the time allowed by the season for operation. With the advice of the district attorney, the Commander-in-Chief has concluded to take hold of all who are worth the trouble in a more summary way—that is, by the military arm, and then to deliver them over to the disposition of the judiciary. In the meantime, all possible means are using to obtain evidence, and accomplices will be turned against the others.

This step is directed by that principle of common law that every man may of right apprehend a traitor.

I hope good objects will be found notwithstanding many have gone off. It is proved that Breckenridge did not subscribe till after the day, and that he has been the worst of all scoundrels. The only question is how far the candor of the government, owing to the use made of him by the commissioners, might be compromised.

The Commander-in-Chief is taking measures, with a good prospect of success, to engage a competent corps to be stationed in the country—a regiment of infantry and four troops of horse. The plan is to engage them for nine months, but a suit of clothes must be allowed.

Being not very well, I am obliged to be brief.

With the truest respect and attachment, I have the honor to be, sir, etc.

HAMILTON TO WASHINGTON

ROSHAVEN TOWNSHIP, November 11, 1794.

SIR:—I have the honor of your note of the 5th instant.

To-morrow the measures for apprehending persons and seizing stills will be carried into effect. I hope there will be found characters fit for examples, and who can be made so. Colonel Hamilton, sheriff, is now at our quarters—come to make a voluntary surrender of himself. It is not yet certain how much can be proved against him; but otherwise he is a very fit subject.

I observe what Mr. Bache is about. But I am the more indifferent to it, as experience has proved to me (however it may be in ways which I could not *allege* in my justification), that my presence in this quarter was in several respects not useless. And it is long since I have learned to hold popular opinion of no value. I hope to derive from the esteem of the discerning, and an internal consciousness of zealous endeavors for the public good, the reward of those endeavors.

I propose, if no urgent reason to the contrary occurs, to leave this country for Philadelphia about the 15th instant, and I shall lose no time in reaching it. Meanwhile I trust the business of my department will suffer no injury from my absence.

Before I go I will try to see that a good arrangement is made with regard to arms, stores, etc.

With true respect and affectionate attachment, etc.

P. S.—Poor Lenox has been on the torture so

long, and has lately received such unpleasant accounts, that we have all advised him to return to Philadelphia. The substitutes devised will guard against injury to the service. Intelligence having been received of some of the insurgents having embodied about Beaver Creek, a plan is laid provisionally for giving them a stroke, the execution of which will be speedily attempted, if nothing to the contrary occurs.

HAMILTON TO WASHINGTON

TOWN OF WASHINGTON, November 15, 1794.

SIR:—I had the honor of writing to you three days since by Mr. Vaughan. Nothing material has since occurred, except that a number of persons have been apprehended. Twenty of them are in confinement at this place; others have not yet arrived. Several of those in confinement are fit subjects for examples, and it is probable from the evidence already collected, and what is expected, that enough for that purpose will be proved. The most conspicuous of these for character or crime, are understood to be the Rev. John Corbly, Colonel Crawford, Colonel John Hamilton, Thomas Sedgwick, David Lock, John Munn, John Laughery.

The evidence has not yet fixed the situation of Colonel Hamilton.

A warrant has been sent after Colonel Gaddis, of Fayette, another very fit subject; but, from the lapse of time, I fear he has escaped.

The bad spirit is evidently not subdued. Informa-

tion is just received that within the last three days a *pole* has been erected about sixteen and a half miles from this place, on the road to Muddy Creek; measures are taken on the subject.

But it is more and more apparent, that for some considerable time to come a military force in this country is indispensable. I presume the temporary one meditated will be accomplished.

To-morrow I leave this place for Pittsburgh. If nothing extraordinary happens, I shall leave that place for Philadelphia on the 19th. By that time every thing will have taken its shape.

With true respect and affectionate attachment, I have the honor to be, etc.

HAMILTON TO WASHINGTON

PITTSBURGH, November 17, 1794.

SIR:—I wrote to you two days since by express from Washington. The judiciary with myself arrived here last evening. The list of prisoners has been very considerably increased, probably to the amount of one hundred and fifty, but it is not yet so digested as to be forwarded. Governor Lee just informs me, that he has received a letter from Marietta, advising him of the apprehending of John Holcroff, the reputed *Tom the Tinker*, and one Wright, a notorious offender.

Subsequent intelligence shows that there is no regular assemblage of the fugitives where it is supposed. There are only small vagrant parties in that quarter, affording no point of attack.

Every thing is urging on for the return of the troops. The engagement of a corps to remain here goes on, it is said, well.

With perfect respect and true attachment, I have the honor to be, etc.

HAMILTON TO WASHINGTON

PITTSBURGH, November 19, 1794.
7 o'clock in the morning.

SIR:—I wrote you the day before yesterday, by express. Nothing material remains to be said. The army is, generally, in motion homeward—the Virginia line, by way of Morgantown, to Winchester, etc.; the Maryland line, by way of Uniontown, to Williamsport, etc.; the Pennsylvania and New Jersey, by the old Pennsylvania route, to Bedford. The judiciary is industrious in prosecuting the examination of prisoners—among whom there is a sufficient number of proper ones for examples, and with sufficient evidence. Col. Gaddis has been brought in.

With perfect respect and true attachment, I have the honor, etc.

P. S.—In five minutes I set out for Philadelphia.

MILITARY PAPERS

MILITARY PAPERS

MILITARY PEACE ESTABLISHMENT [1]

1783.

BEFORE any plan can, with propriety, be determined or a military peace establishment, it is necessary to ascertain what powers exist, for that purpose, in the Confederation.

In the fifth clause of the ninth article, the United States, in Congress assembled, are empowered (without any mention of peace or war) "to build and equip a navy, to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in each State; which requisition shall be binding; and thereupon, the Legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm, and equip them, in a soldier-like manner, at the expense of the United States; and the officers and men, so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

By the fourth clause in the same article, the

[1] A report to the Congress of the Confederation, with a plan not likely to be adopted, as indeed it was not.

United States are empowered "to appoint all officers of the land forces in the service of the United States, excepting regimental officers; to appoint all officers of the naval forces; and to commission all officers whatever, in the service of the United States, making rules for the government and regulation of the said land and naval forces, and directing their operations."

By the fourth clause of the sixth article, it is declared, that "no vessels of war shall be kept up by any State in time of peace, except such number only as shall be deemed necessary by the United States, in Congress assembled, for the defence of such State or its trade; nor shall any body of forces be kept up by any State, in time of peace, except such number only as in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State."

The committee apprehend, that the terms of the last clause, being rather permissive than directory, do not interfere with the positive power vested in the United States by the preceding clauses; and that they have a discretion in the choice of the mode of providing for the general safety in time of peace as well as in time of war.

If this interpretation is just, the committee are of opinion there are conclusive reasons in favor of a continental, in preference to separate State establishments; and that, at all events, there must be some continental establishment.

Firstly.—There are objects which cannot fall within the purview of separate State establishments:

posts within districts, the jurisdiction and property of which are covered by opposite and interfering claims, the possession of which for the security of the western country is of great importance, and for which provision cannot with propriety be made by any particular State; a tract of territory ceded to the United States by the late treaty with Great Britain, which is not within the original claims of any of the States, the safety of which must depend on continental provisions; the navigation of the Mississippi, in which all the States are more or less interested, and the security of which ought to be provided for by their joint forces, as well naval as land; the fisheries, the rights respecting which are in no particular States, but in the Union at large, and therefore call for the protection of the Union; the general commerce of the United States, the rights of which, founded upon the laws of nations and the treaties of the United States with foreign countries, also claim the joint protection of the Confederacy, and cannot, with propriety, be left to the care of State establishments. A distinction that, in time of war it is to be protected by the Union, in time of peace by each State, would involve, besides other inconveniences, this capital one: That the United States, when a Federal navy should become necessary to assert the Federal rights, would be obliged to *begin to create*, at the moment they would have occasion to employ, a fleet.

Secondly.—The fortifications to be established for the security of the States ought to be constructed with relation to each other on some general and

vision of the forces, which will be necessary to be kept up, will be made upon a more systematic and economical plan than a provision by the States separately; especially as it will be of great importance that, as soon as the situation of affairs will permit, public manufactories of arms, powder, etc., should be established; and a part of the troops, employed in this way, will furnish those necessary articles to the United Sates, and defray a considerable part of the expense of supporting themselves.

Fifthly.—There must be a corps of artillery and engineers, which, being a scientific corps, and requiring institutions for the instruction and formation of the officers, cannot exist upon separate establishments without enormous expense.

The committee, upon these principles, submit the following

PLAN

The Military peace establishment of the United States to consist of four regiments of infantry, one regiment of dragoons, one regiment of artillery incorporated in a corps of engineers, with the denomination of the Corps of Engineers.

Each regiment of infantry to consist, when complete, of two battalions; each battalion of four companies; and each company of one hundred and twenty-eight rank and file, with the following commissioned and non-commissioned officers:

One colonel; two majors, one to each battalion; eight captains, one to each company; nineteen lieutenants, two to each company; or twenty-one lieutenants, eleven first and ten second lieutenants, including one paymaster, one

quartermaster, one adjutant, and two ensigns, one ensign to each battalion; chaplain, surgeon, and mate; two sergeant-majors, one to each battalion; two quartermaster-sergeants, one to each battalion; two drum-and-fife majors, one to each battalion; sixteen drums and fifes, two to each company; thirty-two sergeants, four to each company; one hundred and twenty-eight corporals, included in the rank and file—that is, sixteen corporals and one hundred and twelve private men to a company.

The regiment of dragoons to consist, when complete, of two cohorts, each cohort of two squadrons, each squadron of two troops, and each troop of thirty-two dragoons, rank and file, with the following commissioned and non-commissioned officers:

One colonel; two majors; eight captains; nineteen lieutenants, including paymaster, quartermaster, and adjutant; chaplain; one surgeon and one mate; two sergeant-majors; two quartermaster-sergeants; two trumpet-majors; eight trumpeters; eight farriers; sixteen saddlers; two riding-masters; thirty-two sergeants; sixty-four corporals, included in the rank and file—that is, to each troop eight corporals and twenty-four private dragoons.

The corps of engineers to be composed as follows:

One major or brigadier-general commandant; one colonel; two lieutenant-colonels; two majors; twenty captains; forty-five lieutenants (including paymaster, quartermaster, and adjutant), twenty first and twenty-three second lieutenants; chaplain, surgeon, and two mates; one professor of mathematics; one professor of chemistry; professor of natural philosophy; professor of civil architecture; two sergeant-majors; two quartermaster-sergeants; two drum-and-fife-majors; twenty drums and fifes; forty sergeants; thirty-two bombardiers;

eight corporals of sappers and miners; three hundred and eighty-four matrosses; ninety-six sappers and miners; one hundred and eighty-eight artificers of different kinds, to be distributed in the following manner:

Two battalions of artillery, each consisting of four companies, commanded by a field officer; each company consisting of one captain, four lieutenants, four sergeants, four bombardiers, and forty-eight matrosses.

Two companies of sappers and miners; each company consisting of one captain, four lieutenants, four sergeants, and forty-eight sappers and miners.

A corps of artificers, commanded by one captain of the corps, and consisting of:

Artificers of the First Class

	Pay per month
One master-founder in brass	$60
One master-founder in iron	60
One master-armorer	50
One master-cutler	50
One master-blacksmith	50
One master-carpenter	50
One master-wheelwright	50
One master-mason	50
One master-saddler	50
One master-manufacturer of cartridge-boxes, scabbards, etc.	50
One master-engraver	60

Of the Second Class

Four founders in brass and iron; four armorers; two cutlers; two blacksmiths; two carpenters; two wheelwrights; two masons; two saddlers; two manufacturers of cartridge-boxes, etc.

Of the Third Class

Four founders in brass and iron; twenty armorers; twelve cutlers; [powder-makers?] thirty blacksmiths; thirty carpenters; twenty wheelwrights; twelve masons; six saddlers; six manufacturers of cartridge-boxes, etc.; two turners; two tinmen; two brickmakers; two potters; one glazier; two cabinet-makers; one locksmith; one spur-maker; one tanner; one currier.

That the pay of a regiment of Infantry shall be as follows:

	Per month
To a colonel	$100
Major	65
Captain	50
Lieutenant	25
Ensign	20
Paymaster, besides his pay as lieutenant	15
Quartermaster, do. do.	15
Adjutant, do. do.	15
Chaplain	50
Surgeon	50
Mate	25
Sergeant-major and quartermaster-sergeant, each	8
Drum-and-fife-major	8
Drum and fife	2
Sergeant	5
Corporal	3
Private	2

The pay of a regiment of dragoons, as follows:

		Per month
Field officers as infantry.		
Captain	being obliged to find their own horses	$60
Lieutenant		35

	Per month
Quartermaster, paymaster, adjutant, as infantry,	$40
Second lieutenants	30
Chaplain, surgeon, and mates, as in the infantry.	
Sergeant-majors, quartermaster-sergeants, do.	
Trumpet-major	8
Trumpeter	8
Farrier	8
Saddler	8
Riding-master	10
Sergeants, corporals, and private dragoons, as in the infantry.	

The pay of the corps of artillery and engineers, to be as follows:

	Per month
Commandant according to his rank.	
To a colonel	$110
Lieutenant-colonel	80
Major	70
Captain	60
Lieutenant	30
Paymaster, Quartermaster, Adjutant, (including pay as lieutenants; first lieutenants, $30, second lieutenants, $25.)	each 45
Chaplain, surgeon, and mates, as in infantry.	
Professors, each	80
Sergeant-major, quartermaster-sergeant, each .	8
Drum and fife-majors	8
Drums and fifes	3
Sergeant	6
Bombardier	4
Corporal	4
Matross, or private of sappers or miners . .	3
Artificers as annexed to them.	

That a ration of provisions shall consist of one pound of bread, or flour; half a pound of salt, or three-fourths of a

pound of fresh beef or pork; a pint of peas, or other vegetables equivalent; one gill of vinegar, and a half gill of salt.

Each officer and soldier to be entitled to draw one ration per day; the officer at his option to receive the estimated value in money; and the soldier to be paid at the rates annexed to each article, for whatever it may not be possible to furnish him.

That there be an allowance of ——— soap per ——— to each commissioned officer; and ——— to every non-commissioned officer and soldier.

The allowance of forage to officers whose duty is to be performed on horseback, shall be as follows:

To a major-general, four rations; brigadier, three; field officers of every corps, each, two; chaplain, surgeon, quartermaster, paymaster, adjutant, of every corps, each, one; captains, and other officers of dragoons, each, one; captains of engineers, each, one.

A ration of forage to consist of the following articles:

* * * * * * *

When officers are absent from their corps on duty, and cannot draw forage, they shall be paid for it at the rate of ——— for each ration.

That the allowance of clothing to each non-commissioned officer, and private soldier, shall be as follows:

One cloth coat, jacket, and overall, every second year; one hat, one linen frock, three pair overalls, six pair shoes, two leather stocks, annually; one blanket every ——— year. And if it shall be found necessary to supply any non-commissioned officer or soldier, with any articles beyond the quantity above specified, the value thereof shall be deducted from his pay, according to the rates annexed to each.

If the idea of the Confederation is adhered to, the number of troops to be raised must be distributed in the best manner the nature of the case will admit, to the several States, according to the proportion of their respective populations; and each must appoint regimental officers in proportion to the number of men it furnishes; but as no State will have to furnish a complete regiment, this apportionment of the officers, especially, will become extremely difficult, if not impracticable, on any satisfactory plan, and the filling up vacancies as they arise will produce endless perplexity. It would be much to be preferred, if the States could be induced to transfer this right to Congress; and indeed, without it, there can never be regularity in the military system. It would also be much the best, that the men should be enlisted under continental direction, which will be a more certain and more economical mode; for, as it now stands, the United States are obliged to pay for all mismanagement or extravagance which may happen.

The next object to be attended to, is that of fortifications. These are of two kinds, land and naval: the first for internal security, the last for the protection of the future fleets of the United States.

As to the first kind, there are many posts of importance already existing, several of which it will be essential to occupy and guard, till more permanent measures can be taken on a general plan. For this, Congress have already made provision by their resolution of the ———.

The committee are of opinion, that the principles

laid down in the memorial from Major-General Du Portail, Chief Engineer, accompanying this report, so far as they respect the article of fortifications, are, in general, sound and just; and that it will be expedient for Congress, as soon as they have determined on the establishment of the corps of engineers, to instruct the head of that corps to make a general survey of the points necessary to be fortified, and to lay a general plan before Congress for their consideration.

With respect to maritime fortifications, the committee are of opinion, that this object, though of the highest importance, cannot be immediately undertaken; but that it will be advisable for Congress to appoint an Agent of Marine, to make all the inquiries, obtain all the lights, and prepare, in proportion as the public finances will admit, all the means previously requisite towards the establishment of posts and the formation of a navy.

The committee apprehend, that even if the resources of the United States were at this time equal to the undertaking of constructing and equipping a navy, it would be ineligible to enter upon it, till a plan, deliberately combined in all its parts, had been digested and approved for that purpose. As the preparatory steps will require a considerable length of time before such a plan could be matured for execution, it will, therefore, be proper, in the judgment of the committee, to make the appointment suggested as speedily as it can conveniently be done.

The committee are further of opinion, that it will be proper for Congress to keep constantly on foot,

magazines and arsenals, in different parts of the United States, equal to the complete equipment of twenty thousand men, in every thing necessary for the field or for a siege, calculating on a three years' supply; and that, in this view, it will be expedient to establish arsenals and magazines at the following places: * * * * * * *

and to deposit all the artillery and military stores, in possession of the United States, in those several places, in equal proportions; and as soon as may be, to make up any deficiencies which may be found in the quantity proposed; so that each deposit may suffice for five thousand men.

With respect to the establishment of military academies, as proposed in the letter of the Secretary at War, the committee are of opinion, that the benefits of such institutions rarely compensate for the expense; and that, by having the three professors proposed to be attached to the corps of engineers, all the utility to be expected from academies may be substantially obtained: that, at all events, such institutions can only be the object of future consideration.

The committee are of opinion, that as soon as the situation of public affairs will permit, it ought to be made a serious object of policy, to be able to supply ourselves with all the articles of first necessity in war; and in this view, to establish foundries, manufactories of arms, powder, etc.

There are two reasons which appear to them conclusive for this. The first is, that every country ought to have within itself all the essential means

of defence, for to depend on foreign supplies is to render its security precarious; the second, that as it will be indispensable to keep up a corps of artillery, and some other troops, the labor of a part of these, bestowed upon the manufactories, will enable the public to supply itself on better terms than by importation. The committee propose that the Secretary at War be directed to lay before Congress a plan, in detail, for this purpose; designating the places where those foundries and manufactories can be erected with advantage, the means to be employed, and the expense to be incurred in the execution of the plan.

The committee are of opinion, that a general staff is unnecessary in time of peace, as all the objects of it may be answered by the War Department, by the regimental officers, and by contracts. They would only recommend to have a major-general to command all the troops; a general officer to command the corps of engineers and artillery; and an inspector-general to preserve uniformity in the regulations and service of the troops.

The pay of these officers may be:

To a major-general, per month . . . $——
To a brigadier-general . . . . . $——
Inspector-general, including the pay of his rank . . . . . $——

In time of war, it will be necessary to appoint a brigadier-general to each brigade consisting of two regiments of infantry; but during peace, as the service of the regiments will be detached, this may be dispensed with.

It will be necessary to establish a general hospital for the reception of invalids of the army and navy. For the present, only the following officers will be requisite:

	Pay and subsistence per month
One Physician and Director, who shall also have the superintendence of the regimental hospitals	$80
One purveyor and apothecary	50
One surgeon	50
One mate	25
One steward	15
One matron	8
Four nurses, each	5

To be entitled to draw a ration per day each, and no other subsistence or allowance.

The invalids to be allowed no pay; but the clothing and rations specified for soldiers during life.

The gross expense of this establishment, if complete, as will appear by the annexed estimate, will be . $——

From this may be deducted the value of the product of the manufactories, when established by the estimate also annexed . . . . . ——

Balance, an annual charge upon the United States . . . . . $——

If Congress should think it inexpedient immediately to incur so considerable an expense, the following method may be taken to diminish it.

The companies of infantry may, for the present, be recruited only to sixty-four men each.

Only four troops of the dragoons may be raised, and only one troop mounted. It would be inexpedient to neglect this arm altogether; for it will always, in case of

war, be of great importance in the Southern States; and the knowledge of its principles and uses ought to be cultivated.

The companies of sappers and miners, and the company of artificers, except the master-founders and the armorers, may be deferred till the means of the United States will admit of carrying into execution the plan of foundries and manufactories.

Yet it would be proper that these establishments should be adopted as proposed; and the execution, in these instances, suspended.

The savings of expense, by these deductions, would amount to ———; which, taken out of the aggregate expense of the whole establishment, will leave a residue of annual expense, of ———.

The committee are of opinion that this expense is unavoidable, and that the only question is, whether it shall be borne by the United States or by particular States; in which last case it is probable it will be greatly increased, for want of being conducted on a systematic plan; and it is to be observed that the resources of the States, jointly or severally, are confined within certain bounds; and that if any States contribute an extra portion in one way, they must contribute less than their proportion in another. The superior national considerations already stated, leave no doubt as to the manner in which the question ought to be decided.

The committee are also of opinion, that in considering the means of national defence, Congress ought not to overlook that of a well-regulated militia; that as the keeping up of such a militia, and proper

arsenals and magazines, by each State, is made a part of the Confederation, the attention of Congress to this object will be a constitutional duty; that as great advantages would result from uniformity in this article, in every State, and from the militia establishment being as similar as the nature of the case will admit, to the continental military establishment, it will be proper for Congress to adopt and recommend a general plan for that purpose.

The committee submit the following outlines of such a plan; which may, if thought necessary, be digested and improved.

All the free male inhabitants in each State, from twenty years old to fifty, except such as the laws of each State shall think it proper to exempt, to be divided into two general classes; one class consisting of married, and the other class consisting of single, men.

Each class to be formed into corps of infantry and dragoons, organized in the same manner as has been proposed for the continental troops.

Those who are willing to be at the expense of equipping themselves for the dragoon service, to be permitted to enter into that corps. The residue to be formed into infantry. This will consult the convenience and inclinations of different classes of citizens.

Each officer and private of the dragoons, to provide himself with a horse, saddle, etc., pistols and sabre; and each non-commissioned officer and private, with a carbine and cartouch-box, with twelve rounds for his carbine and six rounds for each pistol.

Each officer of the infantry to have a sword and *espon-ton;* and each non-commissioned officer and private, a

musket, bayonet, and cartouch-box containing always twelve rounds of powder and ball.

That the corps of single men be obliged to assemble in companies once a month, and once in three months regimentally, to be inspected and exercised, subject to a penalty to be assigned for that purpose.

That the corps of married men be obliged to assemble once in three months by companies, and once in six months regimentally, for the same purpose as above mentioned.

That when the State is invaded, the corps of either class, indifferently, shall be obliged to take the field for its defence, and to remain in service one year, unless sooner relieved by special order.

That when another State is attacked, and it is necessary to march to its succor, one half of the corps of single men shall be obliged to take their turn first, and to serve for the same period; to be afterwards relieved by one half of the corps of the married men; and so on alternately.

That in addition to these two classes, there shall be a third class, under a particular denomination, as fencibles fusiliers, train-bands, or whatever else may be judged expedient; with the same organization as the other classes but composed in the following manner:

Of all such of either of the two other classes as will voluntarily engage to serve for the term of eight years provided they shall not exceed the proportion of one to fifty of all the enrolled militia of the State; and provided that, if a war breaks out, they shall be bound to serve three years after they are called into service, and to march wherever the service may require.

The conditions on the part of the public to be these That they shall be furnished with a musket, bayonet, car touch-box, and twenty-four rounds of powder and ball

and once every two years with a suit of uniform, to consist of a coat, jacket, and overall of cloth; the arms and accoutrements to become their property at the end of their time of service.

These corps to be obliged to assemble by companies once a week, and by regiments monthly, for exercise and inspection; and to encamp at a general rendezvous twenty days in each year, to be paid at the rate of sixpence per day to each non-commissioned officer and private. Whenever any of the militia are called into service, they shall be entitled to the same emoluments with the regular troops.

The committee are of opinion that, with a view to these establishments, it will be proper to direct the Commander-in-Chief to appoint a Board, consisting of not more than five officers, of which the Inspector-General, Commandant of Artillery, and Chief Engineer, to be members, to revise the system of regulations for the army of the United States; and to digest, for the consideration of Congress, a general ordinance for the service of the troops of the United States, as well as the corps of engineers and of horse, as of infantry: also an ordinance to be recommended to the several States for the service of the militia.

All promotions to be made regimentally to the rank of colonel, according to seniority; and from the rank of colonel upwards, the officers of dragoons and infantry shall roll together, and be promoted according to seniority, without distinction of corps.

The rule of promotion in the corps of engineers, to be, in all respects, distinct, and according to seniority in that corps.

Provided that no officer, of whatsoever corps, shall

consider it as a violation of his rights, if any other who has been fortunate enough to have an opportunity of distinguishing himself in a particular manner, receives an extra promotion in the corps, on account of brilliant services or peculiar talents.

And in order that such extra promotion may not be produced by misrepresentation, it shall not be made, but on the recommendation of the commander of the army, accompanied by an authenticated state of the facts and reasons upon which the recommendation is founded; together with the opinion of the officer commanding the corps in which the promotion is to be made; all which shall be reported to Congress by the Secretary at War, with his sentiments thereupon.

The officers to command the different corps in the first instance, to be appointed out of such of those now in service, as are willing to continue in the military line; provided that those who are retained shall not be entitled to the half pay for their services during the war.

The men to be enlisted for six years.

Women to each company.

Notes to be recollected [1]

An absurdity, that Congress are empowered to build and equip a navy; and yet, in time of peace, the States are to keep up one for their own defence.

There must be a navy formed in time of peace; it ought to be proportioned to our defence; and will then be all in the hands of certain States.

[1] These notes were apparently for a speech sustaining the report—speech and report alike vain in the then anarchic weakness.

Congress, constituted as they are, can't have time for usurpation. Usurpation in such an extensive empire requires long previous preparation, etc.

A people seldom reform with moderation. Men, accustomed to read of usurpation suddenly effected in small cities, look upon such a thing as a work of a day.

The weak side of democracies, is danger of foreign corruption. No individual has sufficient interest in the State, to be proof against the seduction.

The want of an army lost the liberty of Athens—*vide* Demosthenes.

HAMILTON TO McHENRY

PHILADELPHIA, July 28, 1798.

SIR:—I last evening had the honor of receiving your letter of the 25th inst., announcing to me my appointment as Inspector and Major-General.[1] At a crisis like the present, I esteem it my duty to obey the call of the government. Feeling, too, as I ought, the value of the high confidence which is reposed in me, I beg you to convey to the President my most cordial acknowledgments, and the assurance of my best endeavor to merit it.

With great respect and esteem, I am, sir, etc.

HAMILTON TO McHENRY

PHILADELPHIA, July 30, 1798.

DEAR McHENRY:

Scruples of delicacy have occasioned me to hesitate about offering to you certain ideas which it appears

[1] War with France impending, measures were taken to raise an army. The nominal commander of the forces was Washington, the real one Hamilton, who ranked Inspector and First Major-General.

to me, on mature reflection, cannot be withheld consistently either with friendship to you or regard to the service.

I observe you plunged in a vast mass of details. I know from experience, that it is impossible for any man, whatever be his talents or diligence, to wade through such a mass, without neglecting the most material things, and attaching to his operations a feebleness and sloth of execution. It is essential to the success of the minister of a great department, that he subdivide the objects of his care, distribute them among competent assistants, and content himself with a general but vigilant superintendence. This course is particularly necessary when an unforeseen emergency has suddenly accumulated a number of new objects to be provided for and executed.

Hence you will give me leave, in all the frankness of friendship, to express to you an opinion that you will do well to call effectually to your aid the Inspector-General, and likewise Major-General Knox, and to charge them with the management of particular branches of the service.

You already contemplate, and very properly, that the Inspector-General shall occupy himself in preparing a system of tactics and discipline. But will it not be expedient and natural to charge him also with superintending the recruiting service? and may he not be made useful in other ways to the business of the department? General Knox, if he can be drawn to the seat of government, may be rendered extensively useful, especially in whatever relates to the *artillery* branch.

But you will perceive that ideas of this sort presuppose an abandonment of the plan of suspending the emoluments of these officers. They cannot afford to give their time and attention without compensation. As to myself, I must be free to confess that this is utterly impossible. I have the less embarrassment in making the declaration, because it must be obvious that the plan is against my pecuniary interest. Serious occupation in my military office must involve the relinquishment substantially of my profession; and the exchange of from three to four thousand pounds for the compensation of Inspector-General, is evidently but a sorry bargain.

Yours truly, etc.

HAMILTON TO McHENRY

NEW YORK, October 19, 1798.

SIR:—I was yesterday honored with your letter transmitting my commission as Inspector and Major-General.

Agreeably to your desire, I hold myself prepared to attend you within the period you assign. But as the object appears to embrace a concert of advice and assistance with General Knox (who cannot be expected in much less than the utmost limit of the time prescribed), I shall permit myself to defer my journey so as to reach you about the first of November, unless I am told that an anticipation of that day is deemed requisite.

I cannot but observe with satisfaction the conclusion of your letter as to the relative rank of the three major-generals.

I received at the same time your letter of the 11th instant, having been absent from the city for five days past.

I shall to-day confer with Major Hoops and Colonel Stevens on the subject of it, chiefly to ascertain the actual state of things, and by to-morrow's post will communicate my opinion.

HAMILTON TO WASHINGTON

NEW YORK, October 29, 1798.

DEAR SIR:—Some ill health in my family, now at an end, as I hope, interfered with an earlier acknowledgment of your favor of the 21st instant. The contents cannot but be gratifying to me. It is my intention, if not prevented by further ill health in my family, to proceed on the first of November to Trenton. My aid to the Secretary, to the full extent of what he shall permit me to afford, will not be withheld. But every day brings fresh room to apprehend that, whatever may be the props, the administration of the War Department cannot prosper in the present *very well disposed* but very *unqualified* hands.

Most respectfully, etc.

HAMILTON TO JAY

PHILADELPHIA, November 19, 1798.

SIR:—Your letter of the 5th of November has recently reached me at this place, and found me

amongst avocations that scarcely leave me a moment to spare.

You will probably have learned from General Clarkson that the survey of the port has been completed.

But I do not recollect that I have had any answer to a suggestion in one of my letters respecting the employment of engineers to assist in forming the desired plan.

This appears to me an essential preliminary. It is very possible the contrary may have been said to you by persons of whose intelligence you may have a good opinion. Self-sufficiency and a contempt of the science and experience of others are too prevailing traits of character in this country.

But as far as I am to be concerned, auxiliary lights are a *sine qua non.*

I do not feel myself adequate to the complicated task of an engineer, unaided by men of more technical knowledge than myself.

END OF VOL. VI.

AUG 31

3 2044 004 494 647

THE BORROWER WILL BE CHARGED AN OVERDUE FEE IF THIS BOOK IS NOT RETURNED TO THE LIBRARY ON OR BEFORE THE LAST DATE STAMPED BELOW. NON-RECEIPT OF OVERDUE NOTICES DOES NOT EXEMPT THE BORROWER FROM OVERDUE FEES.

Harvard College Widener Library
Cambridge, MA 02138 (617) 495-2413

WIDENER

FEB 2 5 1994

BOOK DUE

WIDENER

JUN 1 7 2003

CANCELLED